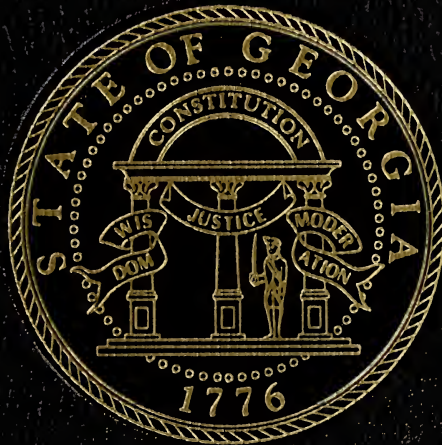


**OFFICIAL CODE
OF
GEORGIA**

ANNOTATED



VOLUME 38

Title 49. Social Services

Title 50. State Government

2009 Edition



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OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



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Volume 38 2009 Edition

Title 49. Social Services
Title 50. State Government

Including Acts of the 2009 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

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STATUTES

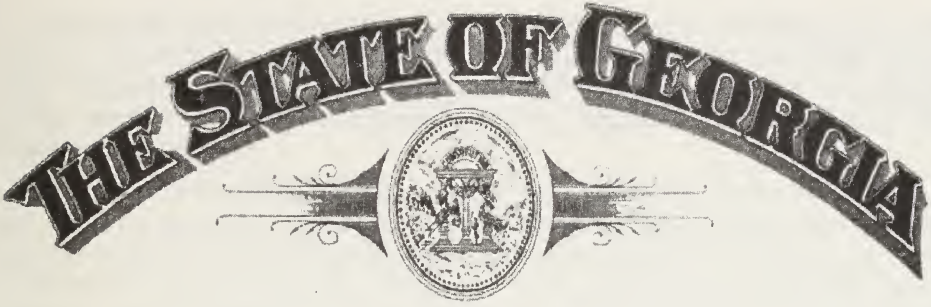
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OFFICE OF SECRETARY OF STATE

*I, Karen C. Handel, Secretary of State of the State of Georgia, do
hereby certify that*

the statutory portion of the Official Code of Georgia Annotated contained
in this volume is a true and correct copy of such material as enacted by
the General Assembly of Georgia: all as same appear of file and record in
this office.



IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed
the seal of my office, at the Capitol, in the City of Atlanta, this 15th day
of July, in the year of our Lord Two Thousand and Nine and of the
Independence of the United States of America the Two Hundred and
Thirty-Fourth.

Karen C. Handel

Karen C. Handel, Secretary of State

Preface

This volume cumulates and replaces the 2006 edition of Volume 38 of the Official Code of Georgia Annotated, as supplemented by the 2008 Cumulative Supplement. The 2006 edition of Volume 38 and its 2008 Cumulative Supplement may thus be recycled or, if so desired, may be retained for historical purposes.

This volume contains all laws specifically codified in Titles 49 and 50 by the General Assembly through the 2009 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through April 10, 2009. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2007, 2008, and 2009 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2007 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Adoption, Ch. 8, T. 19. Regulation of agencies providing physical therapy, nursing care, and other services in individuals' homes, § 31-7-150 et seq.

CHAPTER 1

GENERAL PROVISIONS

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49-1-2.	Compliance of county departments with rules and regulations of the Department of Human Services.	49-1-6.	Transfer of assets of nonprofit corporation to department.
49-1-3.	Power of Governor to reorganize state and local health and welfare organizations; appointment of district health and welfare directors and staff [Repealed].	49-1-7.	Home delivered meals, transportation, services for the elderly, and preschool children with special needs fund.
49-1-4.	Sales by administrators to institutions prohibited.	49-1-8.	Sales of surplus products of institutions; disposition of proceeds [Repealed].
49-1-5.	Suspension and removal of	49-1-9.	Redesignated.

49-1-1. Definitions.

As used in this title, the term:

- (1) "Board" means the Board of Human Services.
- (2) "Commissioner" means the commissioner of human services.
- (3) "County board" means a county or district board of family and children services.
- (4) "County department" means a county or district department of family and children services.
- (5) "County director" means the director of a county or district department of family and children services.
- (6) "Department" means the Department of Human Services. (Ga. L. 1937, p. 355, § 1; Ga. L. 1960, p. 85, § 1; Ga. L. 1963, p. 218, § 1; Ga. L. 1972, p. 1015, §§ 1201, 1203, 1204, 1215; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in paragraph (1), substituted "Board of Human Services" for "Board of Human Resources"; in paragraph (2), substituted "commissioner of human services" for

"commissioner of human resources"; and, in paragraph (6), substituted "Department of Human Services" for "Department of Human Resources".

49-1-2. Compliance of county departments with rules and regulations of the Department of Human Services.

All rules and regulations made by the Department of Human Services shall be binding on the counties and shall be complied with by the respective county departments. (Ga. L. 1937, p. 311, § 4; Ga. L. 1937, p.

568, § 5; Ga. L. 1937, p. 630, § 4; Ga. L. 1952, p. 15, § 4; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in this Code section.

Administrative rules and regulations. — Temporary assistance for needy families, Of-

ficial Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Family and Children Services, Chapter 290-2-28.

49-1-3. Power of Governor to reorganize state and local health and welfare organizations; appointment of district health and welfare directors and staff.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor’s notes. — This Code section was based on Ga. L. 1975, p. 1211, § 1; Ga. L. 1976, p. 685, §§ 1, 2.

49-1-4. Sales by administrators to institutions prohibited.

No individual, supervisor, or member of the Board of Human Services or the county or district boards of family and children services having to do with the administration of this title shall be authorized or permitted, directly or indirectly, to sell supplies or other items of any kind or character to any of the institutions to be benefited by this title. (Ga. L. 1937, p. 355, § 20A; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” near the beginning of this Code section.

49-1-5. Suspension and removal of county board member, county director, or employee or official of department.

(a) In order that the public welfare laws of this state may be better enforced, the Governor is authorized and empowered to suspend any member of any county board, any county director, or any employee or official of the department whenever he or she shall find that good cause for such suspension exists. Such suspension shall be by executive order of the Governor, which shall state the reason therefor. A copy of such order of suspension shall be sent to the person so suspended within five days after it is issued, by registered or certified mail or statutory overnight delivery, return receipt requested, together with a notice from the Governor or his or her executive secretary that the suspended person may be heard before the Governor at such time as may be stated in the notice, which hearing shall be not less than ten nor more than 20 days from the date of the notice. Upon such hearing, if the Governor shall find that good cause for the removal of the person so suspended exists, he or she is authorized and

empowered to remove such member of any county board, any county director, or any employee or official in the department; whereupon, such person's tenure of office or employment shall terminate, subject to the right of appeal granted to any employee under the State Personnel Administration by Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. If the Governor shall find that good cause for the removal of such person does not exist, he or she shall, by appropriate executive order, restore him or her to duty.

(b) In addition to removal by the Governor as specified in subsection (a) of this Code section, the director of the Division of Family and Children Services may terminate the employment of any county director or district director subject to any right of appeal such director may have under the State Personnel Administration by Chapter 20 of Title 45, and the vacancy shall be filled as provided by law. (Ga. L. 1941, p. 485, § 3; Ga. L. 2000, p. 240, § 1; Ga. L. 2000, p. 1589, § 3; Ga. L. 2009, p. 453, § 2-1/HB 228; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, reenacted this Code section without change. The second 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" in the next to the last

sentence of subsection (a) and in subsection (b).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

RESEARCH REFERENCES

ALR. — Conclusiveness of governor's decision in removing or suspending officers, 92 ALR 998.

49-1-6. Transfer of assets of nonprofit corporation to department.

(a) Any charitable or nonprofit corporation which has been granted a charter or articles of incorporation under the laws of this state may transfer all or a part of its assets to the department upon such terms as may be agreed upon between such corporation and the department, provided such corporation shall first have obtained authority to make such transfer in accordance with this Code section.

(b) Any such corporation may apply for authority to make such transfer by filing its petition with the superior court of the county in which such corporation has its principal office. Such application shall set forth the assets which the corporation desires to transfer to the department and the terms upon which it desires to transfer these assets.

(c) Such corporation, once a week for four weeks prior to the filing of such petition, shall publish notice in the newspaper of the county in which is located the principal office of the corporation, such newspaper being the

newspaper in which notices of sheriff's sales are advertised. The notice shall set forth the date, time, and place when such application will be presented, the court to which it will be presented, and the assets which such corporation desires to transfer to the department.

(d) After a hearing, the court shall be authorized to grant the application and permit a transfer of the assets of the applicant upon terms as set out in the application or modified as the court may deem advisable, if the court considers this in the public interest; or the court may deny the application if the court deems such denial to be in the public interest. Where such corporation makes a transfer of all of its right, title, and interest in any of its assets to the department and such transfer is made pursuant to the authority of the court obtained in the manner provided for in this Code section, such transfer shall be conclusively deemed to be a proper and legal transfer.

(e) Should such corporation desire to transfer all of its assets to the department, the court to which such application is presented may include in its order a provision that upon the transfer by such corporation of all of its assets to the department and upon compliance with Chapter 3 of Title 14, the charter or articles of incorporation of such corporation shall stand surrendered and the corporation dissolved.

(f) Nothing contained in this Code section shall be considered as authorizing the department to accept a transfer of assets upon terms which would require the use of them by the department in a manner not authorized by law. (Ga. L. 1952, p. 97, §§ 1-6; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

49-1-7. Home delivered meals, transportation, services for the elderly, and preschool children with special needs fund.

(a) The General Assembly finds that it is in the best interest of the state to provide for programs for home delivered meals, transportation services for the elderly, and preschool children with special needs, including but not limited to disabled children, troubled children, school readiness programs, and other similar needs for the benefit of the citizens of Georgia. In addition to and as a supplement to traditional financing mechanisms for such programs, it is the policy of this state to enable and encourage citizens voluntarily to support such programs.

(b) To support programs for home delivered meals, transportation services for the elderly, and preschool children with special needs which programs have been established or approved by the department or the Department of Community Health, the department may, without limitation,

promote and solicit voluntary contributions through the income tax return contribution mechanism established in subsection (f) of this Code section, through offers to match contributions by any person with moneys appropriated or contributed to the department or the Department of Community Health for such programs, or through any fund raising or other promotional techniques deemed appropriate by the department or the Department of Community Health.

(c) There is established a special fund to be known as the "Home Delivered Meals, Transportation Services for the Elderly, and Preschool Children with Special Needs Fund." This fund shall consist of all moneys contributed under subsection (b) of this Code section, all moneys transferred to the department under subsection (f) of this Code section, and any other moneys contributed to this fund or to the home delivered meals, transportation services for the elderly, or preschool children with special needs programs of the department or the Department of Community Health and all interest thereon. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The fund shall be administered and the moneys held in the fund shall be expended by the department through the Division of Aging Services in furtherance of home delivered meals and transportation services to the elderly programs and by the Department of Community Health in furtherance of preschool children with special needs programs.

(d) Following the transmittal of contributions to the department for deposit in the fund pursuant to subsection (f) of this Code section, the expenditure of moneys in the fund shall be allocated as follows:

(1) Fifty percent of the contributions to the fund shall be used for home delivered meals and transportation services to the elderly programs; and

(2) Fifty percent of the contributions to the fund shall be transferred to the Department of Community Health to be used for preschool children with special needs programs.

(e) Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. Contributions shall only be used for benefits and services and shall not be used for personnel or administrative positions. The department and the Department of Community Health shall each prepare, by February 1 of each year, an accounting of the funds received and expended from the fund and a review and evaluation of all expended moneys of the fund. The reports shall be made available to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, to the members of the Board of Human Services, and, upon request, to members of the public.

(f)(1) Unless an earlier date is deemed feasible and established by the Governor, each Georgia income tax return form for taxable years

beginning on or after January 1, 1993, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Home Delivered Meals, Transportation Services for the Elderly, and Preschool Children with Special Needs Fund established in subsection (c) of this Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to such fund may designate such contribution as provided in this Code section on the appropriate income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the department for deposit in the fund established in subsection (c) of this Code section; provided, however, that the amount retained for administrative costs, including implementation costs, shall not exceed \$50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions. (Code 1981, § 49-1-9, enacted by Ga. L. 1992, p. 3241, § 1; Code 1981, § 49-1-7, as redesignated by Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, redesignated former Code Section 49-1-9 as present Code Section 49-1-7; in subsection (b), inserted "or the Department of Community Health" three times; in subsection (c), inserted "or the Department of Community Health" in the first sentence, and substituted "Division of Aging Services" for "Office of Aging" and substituted "Department of Community Health" for "department" in the second sentence; in paragraph (d)(2), inserted "transferred to the Department of Community Health to be"; and, in subsection (e), in the second sentence, inserted "and the Department of Community Health" and inserted "each", and, in the third sentence, substituted "reports shall" for "report shall" near the beginning, and substituted "Board of Hu-

man Services" for "Board of Human Resources" near the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "Resources (now Services)" in the last sentence of subsection (e).

Pursuant to Code Section 28-9-5, in 2009, "that" was inserted following "however," in the first sentence of paragraph (f)(2).

Administrative rules and regulations. — The Georgia Children and Elderly Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of the Children's Trust Fund Commission, Grant Program, § 98-1-02.

Editor's notes. — Former Code Section 49-1-7 (Ga. L. 1946, p. 45, § 1; Ga. L. 1960, p. 85, § 3; Ga. L. 1963, p. 218, § 7), relating to the purchase of adjacent lands for institu-

tions, was repealed by Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009.

49-1-8. Sales of surplus products of institutions; disposition of proceeds.

Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1939, p. 392, §§ 1, 4.

49-1-9. Redesignated.

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, redesignated former Code Section 49-1-9 as present Code Section 49-1-7.

CHAPTER 2

RESIDENTIAL CHILD CARE LICENSING

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- 49-2-23. Requirements for validly issued inspection warrant; contents of warrant.
- 49-2-24. Evidence generated inadmissible in criminal proceedings.
- 49-2-25. Proceedings for injunction for purpose of enjoining violations of provisions of residential child care licensing law; injunction to abate public nuisance injurious to public health, safety, or comfort.

Cross references. — Probation officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.4. Sharing of court records among juvenile courts, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.9. Commencement of juvenile court proceeding for child on aftercare to Division of Youth Services, Uniform Rules for the Juve-

nile Courts of Georgia, Rule 4.6. Time limitations upon other orders of disposition in juvenile court proceedings, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.3. Court costs for care of child certified by juvenile court, Uniform Rules for the Juvenile Courts of Georgia, Rule 21.1.

RESEARCH REFERENCES

ALR. — Social worker malpractice, 58 ALR4th 977.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — The existing provisions of Chapter 2 were designated as Article 1 by Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009.

49-2-1. Department created; transfer of powers, functions, and duties of Department of Human Resources to Department of Human Services; creation, appointment, removal, and duties of commissioner.

(a) There is created a Department of Human Services. The powers, functions, and duties of the Department of Human Resources as they existed on June 30, 2009, except for those relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Division of Public Health, and the Office of Regulatory Services, unless specifically transferred or reassigned to the Department of Community Health or the Department of Behavioral Health and Developmental Disabilities, are transferred to the Department of Human Services effective July 1, 2009, and the Department of Human Resources shall be reconstituted as the Department of Human Services effective July 1, 2009.

(b) There is created the position of commissioner of human services. The commissioner shall be the chief administrative officer of the department and be both appointed and removed by the board, subject to the approval of the Governor. Subject to the general policy established by the board, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department. (Ga. L. 1972, p. 1015, § 1201; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, designated the existing provisions as subsections (a) and (b); in subsection (a), substituted "Department of Human Services" for "Department of Human Resources" in the first sentence, and added the

second sentence; and, in subsection (b), in the first sentence, deleted "also" following "There is" at the beginning, and substituted "commissioner of human services" for "commissioner of human resources" at the end.

Cross references. — Powers and duties of Department of Community Health generally, § 31-2-1 et seq.

JUDICIAL DECISIONS

Cited in Department of Human Resources v. Briarcliff Haven, Inc., 141 Ga. App. 448, 233 S.E.2d 844 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner's administrative powers not inhibited by Executive Reorganization Act. — The exercise of the power given to the commissioner of human resources to establish the internal structure of the department and to expend available funds for those purposes is not inhibited by any provision of the "Executive Reorganization Act" (Ga. L. 1972, p. 1015), or by the "Board of Human Resources Act" (Ga. L. 1972, p.

1069), or by the statutory foundation for the functions transferred to the department. 1975 Op. Att'y Gen. No. 75-4.

Structural organization of department. — Commissioner has statutory authority to establish the structural organization of the department, including authority to establish regional offices, and to expend available funds for those purposes. 1975 Op. Att'y Gen. No. 75-4.

49-2-2. Board created; qualifications and appointment of members; terms of office; vacancies; removal; per diem and expenses.

(a) There is created a Board of Human Services, as of July 1, 2009, which shall establish the general policy to be followed by the Department of Human Services created by Code Section 49-2-1. The powers, functions, and duties of the Board of Human Resources as they existed on June 30, 2009, except for those relating to the Division of Mental Health, Developmental Disabilities, and Addictive Diseases, the Division of Public Health, and the Office of Regulatory Services, unless specifically transferred or reassigned to the Board of Community Health or the Board of Behavioral Health and Developmental Disabilities, are transferred to the Board of Human Services effective July 1, 2009, and the Board of Human Resources as it existed on June 30, 2009, shall be abolished effective July 1, 2009. The board shall consist of nine members appointed by the Governor and confirmed by the Senate.

(b) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; and three members shall be appointed for three years. Thereafter, all succeeding appointments shall be for three-year terms from the expiration of the previous term.

(c) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment

to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(d) Members of the board may be removed from office under the same conditions for removal from office of members of professional licensing boards provided in Code Section 43-1-17.

(e) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(f) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards. (Ga. L. 1972, p. 1069, § 2; Ga. L. 2002, p. 1420, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, rewrote subsection (a); in subsection (b), in the first sentence, deleted “; three members shall be appointed for four years; and the remaining members shall be appointed for five years” from the end, and made a related change, and in the second sentence, substituted “three-year terms” for “five-year terms”; added present subsection (d); redesignated former subsection (d) as present subsection (e); in subsection (e), substituted “chairperson” for “chairman”; and deleted former subsection (e), which read: “Those members engaged in rendering health services shall comprise no more

than seven members of the total membership of the board.”

Cross references. — Rule-making power of Board of Human Services with regard to treatment of the mentally ill, developmentally disabled, and alcoholics, §§ 37-3-2, 37-4-3, 37-7-2. Restriction on power of board members to contract with state-supported institutions, § 45-10-40 et seq.

Administrative rules and regulations. — Practice and procedure of the Department and Board of Human Resources, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Resources, Chapter 290-1-1.

JUDICIAL DECISIONS

Cited in Ray v. Edwards, 557 F. Supp. 664 (N.D. Ga. 1982).

OPINIONS OF THE ATTORNEY GENERAL

Simultaneous service on county board of health. — Person cannot serve simultaneously as board member and county board of health member. 1985 Op. Att’y Gen. No. 85-28.

Member subject to removal where more than seven rendering health services. — Appointment to the Board of Human Resources of more than seven members who are engaged in providing health services is

precluded; any person engaged in providing health services whose appointment to the board causes that limitation to be exceeded could not lawfully hold office and would be subject to removal. 1976 Op. Att’y Gen. No. 76-46.

Ga. L. 1976, p. 344, § 2 (see O.C.G.A. § 45-10-5) did not negate rule-making powers of Board of Human Resources. 1976 Op. Att’y Gen. No. 76-43.1.

49-2-2.1. Department of Human Services becomes successor-in-interest to all rights, duties, and obligations of former Department of Human Resources.

(a) The Department of Human Services shall succeed to all rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources that are in effect on June 30, 2009, or scheduled to go into effect on or after July 1, 2009, and which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources that are in effect on June 30, 2009, which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. Such rules, regulations, policies, procedures, and administrative orders shall remain in effect until amended, repealed, superseded, or nullified by the Department of Human Services by proper authority or as otherwise provided by law.

(b) The rights, privileges, entitlements, and duties of parties to contracts, leases, agreements, and other transactions entered into before July 1, 2009, by the Department of Human Resources which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 shall continue to exist; and none of these rights, privileges, entitlements, and duties are impaired or diminished by reason of the transfer of the functions to the Department of Human Services. In all such instances, the Department of Human Services shall be substituted for the Department of Human Resources, and the Department of Human Services shall succeed to the rights and duties under such contracts, leases, agreements, and other transactions.

(c) All persons employed by the Department of Human Resources in capacities which relate to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1 on June 30, 2009, shall, on July 1, 2009, become employees of the Department of Human Services in similar capacities, as determined by the commissioner of human services. Such employees shall be subject to the employment practices and policies of the Department of Human Services on and after July 1, 2009, but the compensation and benefits of such transferred employees shall not be reduced as a result of such transfer. Employees who are subject to the rules of the State Personnel Board and thereby under the State Personnel Administration and who are transferred to the department shall retain all existing rights under the State Personnel Administration. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on June 30, 2009, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 2009. Accrued annual

and sick leave possessed by said employees on June 30, 2009, shall be retained by said employees as employees of the Department of Human Services.

(d) On July 1, 2009, the Department of Human Services shall receive custody of the state owned real property in the custody of the Department of Human Resources on June 30, 2009, and which pertains to the functions transferred to the Department of Human Services pursuant to Code Section 49-2-1. (Code 1981, § 49-2-2.1, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Effective date. — This Code section became effective July 1, 2009.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “State Person-

nel Administration” was substituted for “State Merit System of Personnel Administration” twice in the third sentence of subsection (c).

49-2-3. Functions transferred to the board from other boards and commissions.

(a) The policy-making functions of the State Board for Children and Youth, contained in Ga. L. 1963, p. 81, are vested in the Board of Human Services.

(b) The policy-making functions of the Commission on Aging, created in Ga. L. 1962, p. 604, are vested in the Board of Human Services. (Ga. L. 1972, p. 1015, §§ 1215-1217; Ga. L. 1982, p. 833, § 2; Ga. L. 2000, p. 1137, § 10; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, redesignated former subsections (b) and (c) as present subsections (a) and (b),

respectively; and, in subsections (a) and (b), substituted “Board of Human Services” for “Board of Human Resources” at the end.

49-2-4. Creation of divisions; allocation of functions.

There shall be created in the department such divisions as may be found necessary for its effective operation. The commissioner shall have the power to allocate and reallocate functions among the divisions within the department. (Ga. L. 1937, p. 355, § 7; Ga. L. 1960, p. 85, § 8; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor’s notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

49-2-5. Department is institution of state; power to receive and disburse state, county, and federal funds.

The department is declared to be an institution of the state for which the powers of taxation over the whole state may be exercised, and the

department is empowered and authorized to administer, expend, and disburse funds appropriated to it and allocated to it by the General Assembly, the respective counties of the state, and the United States, through its appropriate agencies and instrumentalities for the purpose of distributing old-age benefits and all other benefits as provided in this title. (Ga. L. 1937, p. 355, § 2; Ga. L. 1960, p. 85, § 2; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, inserted a comma following “exercised” near the beginning of this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Voluntarily donated county funds. — The department may accept public funds donated voluntarily by counties for the provision of day care and other social services to welfare applicants and other authorized recipients. 1972 Op. Att’y Gen. No. 72-12.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 70 et seq. 79 Am. Jur. 2d, Welfare Laws, § 53 et seq. **C.J.S.** — 64A C.J.S., Municipal Corporations, § 1579. 82 C.J.S., Statutes, § 359.

49-2-6. Duties and powers of department.

(a) The department shall administer or supervise all county departments of the state as provided in Chapter 3 of this title.

(b) The department shall:

(1) Administer or supervise:

(A) All categories of public assistance established under Code Section 49-4-3;

(B) The operation of state charitable institutions;

(C) Agencies and institutions caring for dependent or mentally or physically disabled or aged adults; and

(D) Such other welfare activities or services as may be vested in it;

(2) Provide services to county governments, including the organization and supervision of county departments for the effective administration of welfare functions and the compilation of statistics and necessary information relative to public welfare problems throughout the state;

(3) Prescribe qualifications and salary standards for welfare personnel in state and county departments, subject to Chapter 20 of Title 45;

(4) Assist other state and federal departments, agencies, and institutions, when so requested, by performing services in conformity with the purposes of this title;

(5) Act as the agent of the federal government in welfare matters of mutual concern in conformity with this title and the administration of any federal funds granted to the state to aid in the furtherance of any functions of the department;

(6) Under rules and regulations prescribed by the board, designate county and district departments to serve as agents in the performance of all state welfare activities in the counties or districts;

(7) Have the right to designate private institutions as state institutions; to contract with such private institutions for such activities, in carrying out this title, as the department may deem necessary from time to time; and to exercise such supervision and cooperation in the operation of such designated private institutions as the department may deem necessary;

(8) Have the right to accept and execute gifts or donations for welfare purposes, as may be prescribed by the donors thereof;

(9) Have authority to delegate in whole or in part the operation of any institution or other activity of the department to any other appropriate department or agency of the state, county, or municipal governments; and to contract with and cooperate with such departments or subdivisions in any manner proper for carrying out the purposes of this title; and

(10) Administer such programs and provide such services as may be appropriate and necessary to strengthen family life and help needy individuals attain the maximum economic and personal independence of which they are capable, including services to applicants and recipients of old-age assistance to help them attain self-care, provided that the costs incurred by the county departments in administering this Code section in conjunction with the public assistance programs administered by the department shall be deemed to be administrative expenses. (Ga. L. 1937, p. 355, § 6; Ga. L. 1949, p. 547, § 2; Ga. L. 1957, p. 368, § 3; Ga. L. 1960, p. 85, §§ 6, 7; Ga. L. 1963, p. 81, § 24; Ga. L. 1995, p. 1302, § 14; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in subparagraph (1)(B), deleted “and eleemosynary” following “charitable”; deleted former paragraph (2), which read: “Cooperate in the supervision of all correctional activities, including the operation of all the penal and correctional institutions of the state, together with parole, supervising of probation services, segregation of first offenders, and the inspection of local jails;”; redesignated former paragraphs (3) through (10) as present paragraphs (2) through (9), respectively; deleted former paragraph (11), relating to making provi-

sion for meeting the cost of hospital care of persons eligible for public assistance; and, redesignated former paragraph (12) as present paragraph (10).

Cross references. — Duty of department to maintain list of qualified sign language interpreters to act in administrative and judicial proceedings, § 24-9-103.

Law reviews. — For note, “Welfare Due Process: The Maximum Grant Limitation on the Right to Survive,” see 3 Ga. L. Rev. 459 (1969).

For comment discussing *Williams v. Dandridge*, 297 F. Supp. 450 (D. Md. 1969),

as to the validity under the fourteenth amendment of a state "maximum grant"

welfare provision, see 4 Ga. L. Rev. 203 (1969).

JUDICIAL DECISIONS

Cited in Georgia Dep't of Human Resources v. Demory, 138 Ga. App. 888, 227 S.E.2d 788 (1976).

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Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1, 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-6 and 49-5-7 through former 49-5-11), must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

Voluntarily donated county funds. — The department may accept public funds donated voluntarily by counties for the provision of day-care and other social services to welfare applicants and other authorized recipients. 1972 Op. Att'y Gen. No. 72-12.

Contracts with private institutions for services for mentally retarded children. — The department may contract with a private institution for the purpose of providing day care and other specialized services for mentally retarded children, assign responsibility for the supervision of this contract and use funds allocated from the Governor's Emergency Fund for these purposes, provided that they do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-96.

Collection of child support recovery unit payments. — The Department of Human Resources is authorized to delegate to an appropriate agency the power to collect child support recovery unit payments from the responsible parent. 1982 Op. Att'y Gen. No. 82-99.

The Department of Offender Rehabilitation may not enter into an arrangement with the Department of Human Resources in

which employees of local probation offices, other than probation supervisors, may collect child support recovery unit money which arises from civil proceedings brought by the Department of Human Resources on behalf of errant fathers. 1982 Op. Att'y Gen. No. 82-99.

Heating Energy Assistance Team funds. — The Department of Human Resources may lawfully accept and distribute Heating Energy Assistance Team (HEAT) program funds. In doing so, paragraph (b)(9) (now paragraph (b)(8)) of O.C.G.A. § 49-2-6 is sufficient authority for the department to enter into an acceptance agreement or similar document assuring the donors of the intention to use the funds in the manner contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

The Department of Human Resources may utilize the local departments of family and children services to distribute Heating Energy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

Acceptance of federal funds preparing students for public assistance employment. — The department is authorized to accept federal grants and to administer the grants for the purpose of making funds available to the department for matching federal funds for the purpose of making a direct grant from the department to the school for making direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att'y Gen. No. 71-147.

Contracts or cooperation with Board of Regents authorized. — The department is authorized by law to contract or cooperate with the Board of Regents by accepting funds to be used for the purpose of making funds available to the department for matching federal funds for making a direct grant from the department to the school for mak-

ing direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att’y Gen. No. 71-147.

Rules and regulations of department excluded from filing requirements. — Rules and regulations promulgated by the Department of Human Resources in connection

with the department’s operation and administration of public assistance programs are expressly excluded from the general filing requirement of the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. §§ 50-13-1 through 50-13-22). 1965-66 Op. Att’y Gen. No. 65-8.

RESEARCH REFERENCES

Am. Jur. 2d. — 60 Am. Jur. 2d, Penal and Correctional Institutions, § 10. 70A Am. Jur. 2d, Social Security and Medicare, § 20. 79 Am. Jur. 2d, Welfare Laws, § 77.

C.J.S. — 64 C.J.S., Municipal Corporations, § 955. 72 C.J.S., Prisons and Rights of Prisoners, § 17 et seq.

ALR. — Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up “state plan” contemplated by it, 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220; 121 ALR 1002.

49-2-7. Functions, duties, and authority transferred to the department from other state agencies.

(a) The functions, duties, and authority of the Board of Public Welfare, established by Ga. L. 1919, p. 222, as amended, as transferred and vested in the Board of Control of Eleemosynary Institutions by Ga. L. 1931, p. 7, Section 44A, are vested in the Department of Human Services.

(b) The functions, duties, and authority of the Department of Family and Children Services, created in Ga. L. 1937, p. 355, as amended, are vested in the Department of Human Services.

(c) The functions of the State Board for Children and Youth, created in Ga. L. 1963, p. 81, except for the policy-making functions transferred to the Board of Human Resources, are vested in the Department of Human Services.

(d) The functions, duties, and authority of the State Commission on Aging, created in Ga. L. 1962, p. 602, except the policy-making functions transferred to the Board of Human Services, are vested in the Department of Human Services. (Ga. L. 1972, p. 1015, §§ 15, 1203, 1204, 1212, 1213; Ga. L. 1978, p. 239, § 1; Ga. L. 2000, p. 1137, § 11; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsections (a) through (d), substituted “Department of Human Services” for “Department of Human Resources” at the end; redesignated former subsection (e) as

present subsection (d); and, in subsection (d), substituted “Board of Human Services” for “Board of Human Resources” near the middle.

OPINIONS OF THE ATTORNEY GENERAL

Position of director, office of aging, may be placed in classified service of merit sys-

tem only by act of General Assembly. 1974 Op. Att’y Gen. No. 74-32.

49-2-8. Approval of physicians employed by department.

Reserved. Repealed by Ga. L. 2009, p. 453, § 2-1/HB 228, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1069, § 7.

49-2-9. Powers of department in administering and disbursing funds.

In administering any funds appropriated or made available to the department for welfare purposes, the department shall have the power:

(1) To make use of all local processes to enforce the minimum standards prescribed under or pursuant to the laws providing for grants-in-aid; and

(2) To administer and disburse any and all funds which may be allocated by any municipality of the state or private organization or society for such purposes as may be designated by such municipality or other agency. The department may use a reasonable percentage of such funds for administrative costs, not to exceed 10 percent of the total sum administered. (Ga. L. 1937, p. 355, § 8; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

OPINIONS OF THE ATTORNEY GENERAL

Heating Energy Assistance Team funds. — The Department of Human Resources may utilize the local departments of family and children services to distribute Heating En-

ergy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att'y Gen. No. 83-8.

RESEARCH REFERENCES

C.J.S. — 64 C.J.S., Municipal Corporations, § 1627.

49-2-10. State appropriations; state, county, and federal welfare funds are for public purpose.

For the purpose of carrying out the duties and obligations of the department for performance of welfare services of the state, for administrative costs, for matching such federal funds as may be available for all of the aforesaid services, for the purpose of establishing an equalization fund to be used in assisting those counties which may be unable otherwise to bear their proportionate share of the expenses of administration and of dispensing the benefits provided for under this title, and for dispensing all of the

benefits provided for under this title, the General Assembly shall make appropriations out of the general fund of the state or otherwise for the various and separate activities of the department. All funds appropriated or allocated to the department or to the county departments by the General Assembly, the fiscal authorities of the respective counties, and by the federal government through its appropriate agencies and instrumentalities are declared to be funds provided for a public purpose; and all appropriations provided for in this Code section and hereafter may be expended and distributed by the department for the purposes provided for under this title. (Ga. L. 1937, p. 355, § 16; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, §§ 70, 72.

49-2-11. Acceptance and disbursement of federal aid; compliance with conditions; use of appropriations for matching funds.

(a) Notwithstanding any provision in this title to the contrary, particularly Articles 2, 3, and 5 of Chapter 4 of this title, nothing therein contained shall be construed to prevent the acceptance of more than 50 percent federal matching funds. The department may accept and disburse the maximum percentage of federal grant-in-aid funds made available to this state by the federal government under any formula of variable grants or other formula for the granting of federal grants-in-aid.

(b) The department is authorized to comply with the requirements prescribed by Congress as conditions to federal grants.

(c) To the end of empowering the department to comply with federal requirements and to effectuate the purposes of grant-in-aid welfare programs, the board is authorized to promulgate all necessary rules and regulations and the department is authorized to do all things necessary and proper for the securing of the maximum amount of such federal grants.

(d) In the event that Congress appropriates funds for grants-in-aid to the state governments for the purpose of assisting them in the operation of general assistance programs, medical assistance programs, or any other welfare programs, the department is authorized to cooperate with the federal government in such programs, to accept funds from the federal government in the maximum amounts made available, to disburse them, and to comply with all requirements of the federal government necessary for the securing of such grant-in-aid funds.

(e) Any state funds which are made available by appropriation to the department for matching federal funds shall be available to supply the state portion of expenditures for general assistance programs, medical assistance programs, or any other type welfare programs provided for by the federal government which benefit the citizens or residents of this state.

(f) Notwithstanding subsections (a) through (e) of this Code section, the Department of Community Health shall be the single state agency for the administration of the state medical assistance plan. (Ga. L. 1945, p. 196, §§ 1-5; Ga. L. 1961, p. 222, §§ 1, 2; Ga. L. 1977, p. 384, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

OPINIONS OF THE ATTORNEY GENERAL

Federal funds matched under formulas provided by federal and state regulations. — The department may accept and disburse federal funds and match the federal funds under such formulas as may be provided by the federal government and adopted by the state rules and regulations to the maximum amount provided by federal statute. 1945-47 Op. Att'y Gen. p. 649.

Federal funds to assist students preparing for employment in public assistance. — The department is authorized to accept federal

grants and to administer the grants for the purpose of making funds available to the department for matching federal funds for making a direct grant from the department to the school for making direct grants to students wishing to prepare for employment in public assistance. 1971 Op. Att'y Gen. No. 71-147.

Department employee may not contract to sell to the state any services when that sale would benefit, or be likely to benefit, the employee. 1970 Op. Att'y Gen. No. U70-236.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 10.

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 207.

49-2-12. Development and revision of transportation plan for programs of department.

(a) All divisions and sections within the department shall make an inventory of all the various vehicles to which the department holds title and shall investigate their utilization patterns in order to establish and develop a consolidated and coordinated transportation plan for the various human services programs of the department, including, but not limited to, those programs relating to the aged and to the mentally and physically disabled.

(b) Other departments and agencies of the state shall cooperate with the Department of Human Services in mutually beneficial agreements regarding the establishment and development of a coordinated transportation plan involving various vehicles to which the state has title.

(c) The plan required to be developed under this Code section shall identify the fully allocated costs of the transportation component of their services and take into consideration various limitations on the expenditure of federal funds which may arise in any consolidated or coordinated transportation system. No later than June 30, 1980, a preliminary transportation plan shall be submitted by the department to the Human Relations and Aging Committee of the House of Representatives and the Education and Youth Committee of the Senate, which plan shall be revised and submitted to such committees every two years thereafter. (Ga. L. 1980, p. 1008, § 1; Ga. L. 1992, p. 6, § 49; Ga. L. 1995, p. 1302, § 14; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (b), substituted “Department of Human Services” for “Department of Human Resources” near the middle; and,

in subsection (c), substituted “the Education and Youth Committee” for “the Youth, Aging, and Human Ecology Committee” in the second sentence.

49-2-13. Identifying transportation needs of the elderly and persons with disabilities and alternatives to meet them.

All divisions and sections within the department, in cooperation with the Department of Transportation, shall identify those areas of the state where the general transportation needs of the elderly and persons with disabilities are not and cannot be adequately served by bus service and community service centers furnishing transportation. In further cooperation with the Department of Transportation, the department shall identify alternatives for meeting the transportation needs of these persons and shall report to the committees specified in subsection (c) of Code Section 49-2-12 as required therein. Such alternative means to be considered for providing for the transportation needs of these persons should include, but shall not be limited to:

(1) Contract service resulting from competitive bidding by private sector bus operators operating under Article 1 of Chapter 7 of Title 46;

(2) Contract service resulting from competitive bidding by taxi operators;

(3) Negotiated fee basis with municipal and area-wide transportation systems serving the general public; or

(4) Any combination of paragraphs (1) through (3) of this Code section. (Ga. L. 1980, p. 1008, § 2; Ga. L. 1995, p. 1302, § 16; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendments. — The first 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the

Code, substituted “Any combination of paragraphs (1) through (3) of this Code section.” for “Any combination of above.” in

paragraph (4). The second 2009 amendment, effective July 1, 2009, made identical changes.

49-2-13.1. Financial assistance for transportation services for the elderly and persons with disabilities.

(a) The department may, when funds are available from the United States government for such purposes, provide financial assistance with such funds, or such funds and state general funds appropriated for these purposes, to private nonprofit corporations and associations for the specific purpose of assisting them in providing transportation services meeting the special needs of the elderly or persons with disabilities, or both, for whom the department determines that the mass transportation services planned, designed, and carried out by local public bodies, agencies, and authorities are unavailable, insufficient, or inappropriate. Such financial assistance shall be subject to those terms, conditions, requirements, and restrictions as the department determines to be necessary or appropriate in order to carry out the purposes of this Code section.

(b) In order to effectuate and enforce this Code section, the department is authorized to promulgate necessary rules and regulations and to prescribe conditions and procedures in order to assure compliance in carrying out the purposes of this Code section. (Code 1981, § 49-2-13.1, enacted by Ga. L. 1990, p. 915, § 3; Ga. L. 1995, p. 1302, § 16; Ga. L. 1996, p. 6, § 49; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Editor's notes. — Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009, reenacted this Code section without change.

49-2-14. Record search for conviction data on prospective employees.

(a) As used in this Code section, the term “conviction data” means a record of a finding or verdict of guilty or a plea of guilty or a plea of nolo contendere with regard to any crime, regardless of whether an appeal of the conviction has been sought.

(b) The department may receive from any law enforcement agency conviction data that is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position the duties of which involve direct care, treatment, custodial responsibilities, or any combination thereof for its clients. The department may also receive conviction data which is relevant to a person whom the department, its contractors, or a district or county health agency is considering as a final selectee for employment in a position if, in the judgment of the employer, a final employment decision regarding the selectee can only be made by a review of conviction data in relation to the particular duties of the position and the security and safety

of clients, the general public, or other employees. Further, the department or any licensed child-placing agency, designated by the department to assist it in preparing studies of homes in which children in its custody may be placed, may receive from any law enforcement agency conviction data that is relevant to any adult person who resides in a home where children in the custody of the department may be placed.

(c) The department shall establish a uniform method of obtaining conviction data under subsection (a) of this Code section which shall be applicable to the department and its contractors. Such uniform method shall require the submission to the Georgia Crime Information Center of fingerprints and the records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. After receiving the fingerprints and fee, the Georgia Crime Information Center shall notify the department in writing of any derogatory finding, including, but not limited to, any conviction data regarding the fingerprint records check or if there is no such finding.

(d) All conviction data received shall be for the exclusive purpose of making employment decisions or decisions concerning children in the custody of the department or who are the subjects of a child protective services referral, complaint, or investigation and shall be privileged and shall not be released or otherwise disclosed to any other person or agency. Immediately following the employment decisions or upon receipt of the conviction data concerning any adult person who has contact with a child who is the subject of a child protective services referral, complaint, or investigation or who resides in a home where children in the custody of the department may be placed, all such conviction data collected by the department or the licensed child-placing agency shall be maintained by the department or child-placing agency pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable. Penalties for the unauthorized release or disclosure of any conviction data shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the Georgia Crime Information Center, as is applicable.

(e) Notwithstanding the provisions of subsection (c) of this Code section, when a contractor to this department is a personal care home, the provisions of Code Sections 31-7-250 through 31-7-264 shall apply.

(f) The department may promulgate written rules and regulations to implement the provisions of this Code section.

(g) The department may receive from any law enforcement agency criminal history information, including arrest and conviction data, and any

and all other information which it may be provided pursuant to state or federal law which is relevant to any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation to the fullest extent permissible by federal and state law, including but not limited to Public Law 92-544. The department shall establish a uniform method of obtaining criminal history information under this subsection. Such method shall require the submission to the Georgia Crime Information Center of fingerprints together with any required records search fee in accordance with Code Section 35-3-35. Upon receipt thereof, the Georgia Crime Information Center shall promptly transmit the fingerprints submitted by the department to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its own records and records to which it has access. Such method shall also permit the submission of the names alone of such adult persons to the proper law enforcement agency when the department is considering placement of a child in exigent circumstances for a name based check of such adult person's criminal history information as maintained by the Georgia Crime Information Center and the Federal Bureau of Investigation. In such exigent circumstances, the department shall submit fingerprints of those adult persons in the placement home, together with any required records search fee, to the Federal Bureau of Investigation within 15 calendar days of the date of the name based check on that person. The fingerprints shall be forwarded to the Federal Bureau of Investigation through the Georgia Crime Information Center in accordance with Code Section 35-3-35. Following the submission of such fingerprints, the department may receive the criminal history information, including arrest and conviction data, relevant to such person. In the event that a child has been placed in exigent circumstances, a name based records search has been requested for any adult person of the placement household, and that adult refuses to provide fingerprints after being requested to do so by the department, the child shall be immediately removed from the placement household by the department, provided that the child is in the custody of the department.

(h) The department shall be authorized to conduct a name or descriptor based check of any adult person's criminal history information, including arrest and conviction data, and other information from the Georgia Crime Information Center regarding any adult person who resides in a home where children in the custody of the department have been or may be placed or which is relevant to any adult person who resides in the home of or provides care to a child who is the subject of a child protective services referral, complaint, or investigation without the consent of such adult person and without fingerprint comparison to the fullest extent permissible by federal and state law. (Code 1981, § 49-2-14, enacted by Ga. L. 1986, p.

1225, § 1; Ga. L. 1999, p. 574, § 2; Ga. L. 2002, p. 942, § 9; Ga. L. 2003, p. 495, § 1; Ga. L. 2005, p. 789, §§ 1, 2/HB 180; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (c), in the first sentence, substituted “department and its contractors” for “department, its contractors, and any district or county health agency” at the end, in the second sentence, substituted “fingerprints and the records search fee in accordance with Code Section 35-3-35” for “two complete sets of fingerprints and the records search fee” at the end, and in the third sentence, deleted “one set of” preceding “fingerprints” and deleted “retain the other set and” preceding “promptly conduct”; in subsection (d), deleted “except to any person or agency with a legal right to inspect the employment, department, or licensed child-placing agency file” from the end of first sentence; in subsection (g), in the third sentence, substituted “finger-

prints” for “two complete sets of fingerprint cards” near the middle, and inserted “in accordance with Code Section 35-3-35” at the end, in the fourth sentence, deleted “one set of” following “transmit”, and deleted “retain the other set and” preceding “promptly conduct”, in the sixth sentence, substituted “fingerprints” for “two complete sets of fingerprint cards”, in the seventh sentence, substituted “The fingerprints” for “Fingerprint cards” at the beginning, and inserted “in accordance with Code Section 35-3-35” at the end; and, in the next-to-last sentence, substituted “fingerprints” for “fingerprint cards” near the beginning.

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 227 (1999).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 71 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 28 et seq.

49-2-14.1. Definitions; records check requirement for licensing certain facilities.

(a) As used in this Code section, the term:

(1) “Conviction” means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(2) “Crime” means commission of the following offenses:

(A) A violation of Code Section 16-5-1, relating to murder and felony murder;

(B) A violation of Code Section 16-5-21, relating to aggravated assault;

(C) A violation of Code Section 16-5-24, relating to aggravated battery;

(D) A violation of Code Section 16-5-70, relating to cruelty to children;

(E) A violation of Code Section 16-5-100, relating to cruelty to a person 65 years of age or older;

(F) A violation of Code Section 16-6-1, relating to rape;

(G) A violation of Code Section 16-6-2, relating to aggravated sodomy;

(H) A violation of Code Section 16-6-4, relating to child molestation;

(I) A violation of Code Section 16-6-5, relating to enticing a child for indecent purposes;

(J) A violation of Code Section 16-6-5.1, relating to sexual assault against persons in custody, detained persons, or patients in hospitals or other institutions;

(K) A violation of Code Section 16-6-22.2, relating to aggravated sexual battery;

(L) A violation of Code Section 16-8-41, relating to armed robbery;

(M) A violation of Code Section 30-5-8, relating to abuse, neglect, or exploitation of a disabled adult or elder person; or

(N) Any other offense committed in another jurisdiction that, if committed in this state, would be deemed to be a crime listed in this paragraph without regard to its designation elsewhere.

(3) "Criminal record" means any of the following:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Facility" means a child welfare agency required to be licensed under Code Section 49-5-12.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "License" means the document issued by the department to authorize the facility to operate.

(8) "Owner" means any individual or any person affiliated with a corporation, partnership, or association with 10 percent or greater

ownership interest in a facility providing care to persons under the license of the facility in this state and who:

- (A) Purports to or exercises authority of the owner in a facility;
- (B) Applies to operate or operates a facility;
- (C) Maintains an office on the premises of a facility;
- (D) Resides at a facility;
- (E) Has direct access to persons receiving care at a facility;
- (F) Provides direct personal supervision of facility personnel by being immediately available to provide assistance and direction during the time such facility services are being provided; or
- (G) Enters into a contract to acquire ownership of a facility.

(9) "Records check application" means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation and a records search fee to be established by the department by rule and regulation, payable in such form as the department may direct to cover the cost of obtaining criminal background information pursuant to this Code section.

(b) An owner with a criminal record shall not operate or hold a license to operate a facility, and the department shall revoke the license of any owner operating a facility or refuse to issue a license to any owner operating a facility if it determines that such owner has a criminal record; provided, however, that an owner who holds a license to operate a facility on or before June 30, 2007, shall not have his or her license revoked prior to a hearing being held before a hearing officer pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c)(1) Prior to approving any license for a new facility and periodically as established by the department by rule and regulation, the department shall require an owner to submit a records check application. The department shall establish a uniform method of obtaining an owner's records check application.

(2)(A) Unless the department contracts pursuant to subparagraph (B) of this paragraph, the department shall transmit to the GCIC the fingerprints and records search fee from each fingerprint records check application in accordance with Code Section 35-3-35. Upon receipt thereof, the GCIC shall promptly transmit the fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to the GCIC and the fee, the GCIC

shall notify the department in writing of any criminal record or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a determination about an owner's criminal record and shall notify the owner in writing as to the department's determination as to whether the owner has or does not have a criminal record.

(B) The department may either perform criminal background checks under agreement with the GCIC or contract with the GCIC and appropriate law enforcement agencies which have access to GCIC and Federal Bureau of Investigation information to have those agencies perform for the department criminal background checks for owners. The department or the appropriate law enforcement agencies may charge reasonable fees for performing criminal background checks.

(3)(A) The department's determination regarding an owner's criminal record, or any action by the department revoking or refusing to grant a license based on such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department.

(B) In a hearing held pursuant to subparagraph (A) of this paragraph or subsection (b) of this Code section, the hearing officer shall consider in mitigation the length of time since the crime was committed, the absence of additional criminal charges, the circumstances surrounding the commission of the crime, other indicia of rehabilitation, the facility's history of compliance with the regulations, and the owner's involvement with the licensed facility in arriving at a decision as to whether the criminal record requires the denial or revocation of the license to operate the facility. Where a hearing is required, at least 30 days prior to such hearing, the hearing officer shall notify the office of the prosecuting attorney who initiated the prosecution of the crime in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license as contemplated within this Code section. If objections are made, the hearing officer shall take such objections into consideration in considering the case.

(4) The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this Code section.

(d) All information received from the Federal Bureau of Investigation or the GCIC shall be for the exclusive purpose of approving or denying the

granting of a license to a new facility or the revision of a license of an existing facility when a new owner is proposed and shall not be released or otherwise disclosed to any other person or agency. All such information collected by the department shall be maintained by the department pursuant to laws regarding and the rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable. Penalties for the unauthorized release or disclosure of any such information shall be as prescribed pursuant to laws regarding and rules or regulations of the Federal Bureau of Investigation and the GCIC, as is applicable.

(e) The requirements of this Code section are supplemental to any requirements for a license imposed by Article 3 of Chapter 5 of this title or Article 11 of Chapter 7 of Title 31.

(f) The department shall promulgate written rules and regulations to implement the provisions of this Code section. (Code 1981, § 49-2-14.1, enacted by Ga. L. 2007, p. 305, § 1/HB 155; Ga. L. 2008, p. 1145, § 3/HB 984; Ga. L. 2009, p. 453, § 2-1/HB 228.)

Effective date. — This Code section became effective July 1, 2007.

The 2008 amendment, effective July 1, 2008, in subparagraph (a)(4)(D), deleted “, including a child-caring institution, child-placing agency, and maternity home” following “agency”.

The 2009 amendment, effective July 1, 2009, rewrote paragraph (a)(4); in paragraph (a)(9), substituted “means fingerprints in such form and of such quality as prescribed by the Georgia Crime Information Center under standards adopted by the Federal Bureau of Investigation” for “means two sets of classifiable fingerprints” near the beginning; in subparagraph (c)(2)(A), in the first sentence, substituted “the fingerprints and records” for “both sets of fingerprints and the records” near the middle, and inserted “in accordance with Code Section 35-3-35” at the end, in the second sentence, substituted “the fingerprints” for “one set of

fingerprints” near the beginning, and deleted “retain the other set and” preceding “promptly conduct” near the end; in paragraph (c)(4), substituted “The GCIC, the department, any law enforcement agency, and the employees of any such entities shall not be” for “Neither the GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be” at the beginning; and, in subsection (d), deleted “except to any person or agency with a legal right to inspect the facility” from the end of the first sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, “to” was inserted preceding “this Code section” in paragraph (a)(9).

Administrative rules and regulations. — Rules and regulations for personal care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-35.

49-2-15. Service of notice against department.

When any action is brought against the Department of Human Services, the Board of Human Services, the commissioner of human services, or any employee or agent thereof or when any action is brought in which the department could be held responsible for damages awarded in such action, it shall be the duty of the plaintiff to provide for service of notice of the pendency of such action by providing for service of a second original process, issued from the court in which the action is filed, upon the

commissioner of human services personally or upon a person designated by the commissioner in writing to serve as agent for the acceptance of such service of process. The service of process in such action shall not be perfected until such second original process has been served as provided in this Code section. The provisions of this Code section shall be cumulative of any other requirements imposed by law for the service of process or notice. (Code 1981, § 49-2-15, enacted by Ga. L. 1989, p. 497, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in the first sentence, substituted “Department of Human Services, the Board of Human Services, the commissioner of human services” for “Department of Human Resources, the Board of Human Resources, the commissioner of human resources” near the beginning, and substituted “commis-

sioner of human services” for “commissioner of human resources” near the end.

Editor’s notes. — Ga. L. 1989, p. 497, § 2, not codified by the General Assembly, provided that the amendment to this Code section by the Act shall apply to all actions filed on or after July 1, 1989.

49-2-16. Council for Welfare Administration.

(a) There is created a Georgia Council for Welfare Administration. The objectives of the council shall be:

(1) To promote improvements in public welfare and social service programs of the Division of Family and Children Services within the Department of Human Services;

(2) To provide a forum for the interchange of information relating to welfare and social service programs; and

(3) To promote with any organization exempt under Section 501(c)(4) of the United States Internal Revenue Code of 1986 a more efficient public welfare delivery system for the citizens of this state.

(b) Membership in the council shall be open to persons actively employed in the Division of Family and Children Services within the Department of Human Services.

(c) No state funds shall be appropriated for the benefit or use of the council.

(d) The council is authorized to adopt bylaws which prescribe its organizational structure, officers, terms and condition of office, meeting schedules, and such other organizational procedures as are necessary for its lawful and effective functioning.

(e) The commissioner of human services shall call the initial meeting of the council at which time the council shall organize and select its officers. (Code 1981, § 49-2-16, enacted by Ga. L. 1996, p. 1423, § 1; Ga. L. 2009, p. 453, § 2-1/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), in the introductory language, substituted “of the council” for “for the council”; in paragraph (a)(1) and in subsection (b), substituted “Department

of Human Services” for “Department of Human Resources” at the end; and, in subsection (e), substituted “commissioner of human services” for “commissioner of human resources” near the beginning.

49-2-17. Disciplinary actions against licensees or license applicants for certain violations.

(a) This Code section shall be applicable to any agency, facility, institution, or entity subject to regulation by the department under Chapter 5 of this title. For purposes of this Code section, the term “license” shall be used to refer to any license, permit, registration, or commission issued by the department pursuant to the provisions of the law cited in this subsection.

(b) The department shall have the authority to take any of the actions enumerated in subsection (c) of this Code section upon a finding that the applicant or licensee has:

(1) Knowingly made any false statement of material information in connection with the application for a license, or in statements made or on documents submitted to the department as part of an inspection, survey, or investigation, or in the alteration or falsification of records maintained by the agency, facility, institution, or entity;

(2) Failed or refused to provide the department with access to the premises subject to regulation or information pertinent to the initial or continued licensing of the agency, facility, institution, or entity;

(3) Failed to comply with the licensing requirements of this state; or

(4) Failed to comply with any provision of this Code section.

(c) When the department finds that any applicant or licensee has violated any provision of subsection (b) of this Code section or laws, rules, regulations, or formal orders related to the initial or continued licensing of the agency, facility, institution, or entity, the department, subject to notice and opportunity for hearing, may take any of the following actions:

(1) Refuse to grant a license; provided, however, that the department may refuse to grant a license without holding a hearing prior to taking such action;

(2) Administer a public reprimand;

(3) Suspend any license for a definite period or for an indefinite period in connection with any condition which may be attached to the restoration of said license;

(4) Prohibit any applicant or licensee from allowing a person who previously was involved in the management or control, as defined by rule, of any agency, facility, institution, or entity which has had its license or

application revoked or denied within the past 12 months to be involved in the management or control of such agency, facility, institution, or entity;

(5) Revoke any license;

(6) Impose a fine, not to exceed a total of \$25,000.00, of up to \$1,000.00 per day for each violation of a law, rule, regulation, or formal order related to the initial or ongoing licensing of any agency, facility, institution, or entity; or

(7) Limit or restrict any license as the department deems necessary for the protection of the public, including, but not limited to, restricting some or all services of or admissions into an agency, facility, institution, or entity for a time certain.

In taking any of the actions enumerated in this subsection, the department shall consider the seriousness of the violation, including the circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public.

(d) The department may deny a license or otherwise restrict a license for any applicant who has had a license denied, revoked, or suspended within one year of the date of an application or who has transferred ownership or governing authority of an agency, facility, institution, or entity subject to regulation by the department within one year of the date of a new application when such transfer was made in order to avert denial, revocation, or suspension of a license.

(e) With regard to any contested case instituted by the department pursuant to this Code section or other provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action, the department may, in its discretion, dispose of the action so instituted by settlement. In such cases, all parties, successors, and assigns to any settlement agreement shall be bound by the terms specified therein and violation thereof by any applicant or licensee shall constitute grounds for any action enumerated in subsection (c) of this Code section.

(f) The department shall have the authority to make public or private investigations or examinations inside or outside of this state to determine whether the provisions of this Code section or any other law, rule, regulation, or formal order relating to the licensing of any agency, facility, institution, or entity has been violated. Such investigations may be initiated at any time, in the discretion of the department, and may continue during the pendency of any action initiated by the department pursuant to subsection (c) of this Code section.

(g) For the purpose of conducting any investigation, inspection, or survey, the department shall have the authority to require the production of

any books, records, papers, or other information related to the initial or continued licensing of any agency, facility, institution, or entity.

(h) Pursuant to the investigation, inspection, and enforcement powers given to the department by this Code section and other applicable laws, the department may assess against an agency, facility, institution, or entity reasonable and necessary expenses incurred by the department pursuant to any administrative or legal action required by the failure of the agency, facility, institution, or entity to fully comply with the provisions of any law, rule, regulation, or formal order related to the initial or continued licensing. Assessments shall not include attorney's fees and expenses of litigation, shall not exceed other actual expenses, and shall only be assessed if such investigations, inspection, or enforcement actions result in adverse findings, as finally determined by the department, pursuant to administrative or legal action.

(i) For any action taken or any proceeding held under this Code section or under color of law, except for gross negligence or willful or wanton misconduct, the department, when acting in its official capacity, shall be immune from liability and suit to the same extent that any judge of any court of general jurisdiction in this state would be immune.

(j) In an administrative or legal proceeding under this Code section, a person or entity claiming an exemption or an exception granted by law, rule, regulation, or formal order has the burden of proving this exemption or exception.

(k) This Code section and all actions resulting from its provisions shall be administered in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(l) The provisions of this Code section shall be supplemental to and shall not operate to prohibit the department from acting pursuant to those provisions of law which may now or hereafter authorize remedial or disciplinary grounds and action for the department. In cases where those other provisions of law so authorize other disciplinary grounds and actions, but this Code section limits such grounds or actions, those other provisions shall apply.

(m) The department is authorized to promulgate rules and regulations to implement the provisions of this Code section. (Code 1981, § 49-2-17, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Effective date. — This Code section became effective July 1, 2009.

ARTICLE 2

INSPECTION WARRANTS FOR RESIDENTIAL CHILD CARE
LICENSING

Effective date. — This article became effective July 1, 2009. of Chapter 2 were designated as Article 1 by Ga. L. 2009, p. 453, § 2-1, effective July 1, 2009.

Editor's notes. — The existing provisions

49-2-20. Definitions.

As used in this article, the term:

(1) "Inspection warrant" means a warrant authorizing a search or inspection of private property where such a search or inspection is one that is necessary for the enforcement of a residential child care licensing law.

(2) "Residential child care licensing law" means this chapter and Chapter 5 of this title and any rule or regulation duly promulgated thereunder. (Code 1981, § 49-2-20, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "this article" was substituted for "this part" in the introductory language of this Code section.

49-2-21. Persons who may obtain inspection warrants; authorization of searches or inspections of property.

The commissioner or the commissioner's designee, in addition to other procedures now or hereafter provided, may obtain an inspection warrant under the conditions specified in this article. Such warrant shall authorize the commissioner or the commissioner's designee to conduct a search or inspection of property either with or without the consent of the person whose property is to be searched or inspected if such search or inspection is one that is elsewhere authorized under the rules and regulations duly promulgated pursuant to a residential child care licensing law. (Code 1981, § 49-2-21, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "this article" was substituted for "this part" at the end of the first sentence in this Code section.

49-2-22. Procedure for issuance of inspection warrants.

(a) Inspection warrants shall be issued only by a judge of a court of record whose territorial jurisdiction encompasses the property to be inspected.

(b) The issuing judge shall issue the warrant when the judge is satisfied that the following conditions are met:

(1) The one seeking the warrant must establish under oath or affirmation that the property to be inspected is to be inspected as a part of a legally authorized program of inspection which includes that property or that there is probable cause for believing that there is a condition, object, activity, or circumstance which legally justifies such an inspection of that property; and

(2) The issuing judge determines that the issuance of the warrant is authorized by this article. (Code 1981, § 49-2-22, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “this article” was substituted for “this part” at the end of paragraph (b)(2).

49-2-23. Requirements for validly issued inspection warrant; contents of warrant.

The inspection warrant shall be validly issued only if it meets the following requirements:

(1) The warrant is attached to the affidavit required to be made in order to obtain the warrant;

(2) The warrant describes either directly or by reference to the affidavit the property upon which the inspection is to occur and is sufficiently accurate that the executor of the warrant and the owner or possessor of the property can reasonably determine from it the property of which the warrant authorizes an inspection;

(3) The warrant indicates the conditions, objects, activities, or circumstances which the inspection is intended to check or reveal; and

(4) The warrant refers in general terms to the statutory or regulatory provisions sought to be enforced. (Code 1981, § 49-2-23, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

49-2-24. Evidence generated inadmissible in criminal proceedings.

No facts discovered or evidence obtained in an inspection conducted under authority of an inspection warrant issued pursuant to this article shall be competent as evidence in any criminal proceeding against any party. (Code 1981, § 49-2-24, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “this article” was substituted for “this part” in this Code section.

49-2-25. Proceedings for injunction for purpose of enjoining violations of provisions of residential child care licensing law; injunction to abate public nuisance injurious to public health, safety, or comfort.

The Department of Human Services is empowered to institute appropriate proceedings for injunction in the courts of competent jurisdiction in this state for the purpose of enjoining a violation of any provision of a residential child care licensing law as now existing or as may be hereafter amended or of any regulation or order duly issued by the board or department. The department is also empowered to maintain action for injunction to abate any public nuisance which is injurious to the public health, safety, or comfort. Such actions may be maintained notwithstanding the fact that such violation also constitutes a crime and notwithstanding that other adequate remedies at law exist. Such actions may be instituted in the name of the department in the county in which a violation of any provision of this title occurs. (Code 1981, § 49-2-25, enacted by Ga. L. 2009, p. 453, § 2-1/HB 228.)

CHAPTER 3

COUNTY AND DISTRICT DEPARTMENTS, BOARDS, AND
DIRECTORS OF FAMILY AND CHILDREN SERVICES

Sec.		Sec.	
49-3-1.	Establishment of county and district departments, boards, and directors.		and children services; personal appearance.
49-3-2.	Appointment of county board members; terms; vacancies; optional additional members; per diem and expenses; additional members for counties with population of 550,000 or more.	49-3-4.	Appointment of staff; salaries; power of commissioner to transfer employees.
49-3-3.	Appointment of county director; bond of county director.	49-3-5.	Powers and duties of county director.
49-3-3.1.	Annual report from county director of department of family	49-3-6.	Functions of county department.
		49-3-7.	Removal of county director for falsification of qualifications.
		49-3-8.	Destruction of county departmental records.

Cross references. — Supervision and support of paupers by counties, Ch. 12, T. 36.

RESEARCH REFERENCES

ALR. — Social worker malpractice, 58 ALR4th 977.

49-3-1. Establishment of county and district departments, boards, and directors.

(a) There shall be in each county of the state a county department of family and children services, which shall consist of a county board of family and children services, a county director of family and children services, and such additional employees as may be necessary for the efficient performance of the welfare services of the county.

(b) With the approval of the Department of Human Services, two or more counties may, however, unite and form a district department of family and children services, in which case a county board shall be appointed for each county composing the district as provided in Code Section 49-3-2 and those boards, acting together, shall constitute the district board. All duties and responsibilities set forth in this title for county departments shall also apply to district departments. The district director and other executive staff of any district department shall be appointed by the Department of Human Services, provided that the department shall not appoint as district director any person whose appointment is not approved by a majority of the district board concerned in a meeting of such district board called for that purpose.

(Ga. L. 1937, p. 355, § 9; Ga. L. 1975, p. 1211, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Re-

sources” in the first and last sentences of subsection (b).

JUDICIAL DECISIONS

County departments were state rather than county offices for purposes of O.C.G.A. § 15-12-71 and, thus, as state offices, were not subject to a grand jury’s power of inspec-

tion and investigation. *Floyd County Grand Jury v. Department of Family & Children Servs.*, 218 Ga. App. 832, 463 S.E.2d 519 (1995).

OPINIONS OF THE ATTORNEY GENERAL

Board member can hold over until successor appointed. — Construing former Code 1933, § 89-105 and Ga. L. 1937, p. 355, §§ 9 and 10 (see O.C.G.A. §§ 45-2-4, 49-3-1, and 49-3-2) together, a county welfare board (now county board of family and children

services) member whose term has expired can and should hold over and perform the duties of such office until the member’s successor has been duly appointed and qualified. 1948-49 Op. Att’y Gen. p. 466.

49-3-2. Appointment of county board members; terms; vacancies; optional additional members; per diem and expenses; additional members for counties with population of 550,000 or more.

(a) Each county board shall consist of five members who shall be appointed by the governing authority of the county. No person serving as a member of a county board on July 1, 1994, shall have such person’s term of office shortened by this subsection. On and after that date, however, vacancies in such office which occur for any reason, including but not limited to expiration of the term of office, shall be filled by appointment of the county governing authority except as provided in subsection (c) of this Code section. No elected officer of the state or any subdivision thereof shall be eligible for appointment to the county board. In making appointments to the county board of family and children services, the governing authority shall ensure that appointments are reflective of gender, race, ethnic, and age characteristics of the county population.

(b) The term of office of members of the county board shall be for five years and until the appointment and qualification of their respective successors, except that upon the expiration of the terms of the members of the county board in office on July 1, 1994, one member shall be appointed for a one-year term, one member for a two-year term, one member for a three-year term, one member for a four-year term, and one member for a five-year term.

(c) Appointments to fill vacancies on the county board caused by death, resignation, or removal before the expiration of a term shall be made for

the remainder of such term in the same manner as provided in this Code section for original appointments. In the event that the governing authority of the county shall fail to fill any such vacancy or any vacancy caused by expiration of term on the county board within 90 days after such vacancy occurs, the commissioner may appoint members to the county board to fill such vacancies.

(d) In addition to the five members required by subsection (a) of this Code section, the county governing authority is authorized but not required to appoint two additional members. One such additional member shall be a school counselor employed in the county and one such additional member shall be a law enforcement officer of the county who is responsible for investigating reports of child abuse. Members appointed pursuant to this subsection shall be appointed for terms of five years and shall be paid the per diem authorized in subsection (e) of this Code section. Appointments to fill vacancies created by the death, resignation, or removal before the end of the term of a member appointed pursuant to this subsection shall be made in accordance with subsection (c) of this Code section.

(e) Members of the county board shall serve without compensation, except that they shall be paid a per diem of not less than \$15.00 per month and shall be reimbursed for traveling and other expenses actually incurred in the performance of their official duties; provided, however, that the gross expenses assessed against a county shall not exceed the amount of the budget of the county previously set aside and levied by the county authorities for such expenses.

(f) In addition to the five members otherwise provided for in this Code section, the board of family and children services in any county of this state having a population of 550,000 or more according to the United States decennial census of 1970 or any future such census shall include an additional two members who shall be subject to this Code section in the same manner as the five members otherwise provided for in this Code section. Each member provided for in this subsection shall be appointed for a term of five years and until the appointment and qualification of the member's successor, except that in the initial appointment of the two additional members one member shall be appointed for a four-year term and one member for a five-year term; and these initial members shall serve until the appointment and qualification of their successors. (Ga. L. 1937, p. 355, § 10; Ga. L. 1963, p. 222, § 1; Ga. L. 1981, p. 960, § 1; Ga. L. 1988, p. 1354, § 1; Ga. L. 1994, p. 505, § 1.)

JUDICIAL DECISIONS

Board action valid despite ineligibility of board member for appointment. — While a justice of the peace is such an elective officer of the state as would render the justice ineligible under this section for appointment by the constituted fiscal or financial agents of a county as a member of the county board of public welfare (now county board

of family and children services), yet, notwithstanding such ineligibility, if the justice is appointed as a member of the board and acts as such, the justice, while so acting, a member of the board de facto, and the official acts of the board wherein the justice participates are valid, and cannot be collat-

erally attacked upon the ground that such person was incompetent to hold such office. *Zorn v. Walker*, 206 Ga. 181, 56 S.E.2d 511 (1949).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner has choice in selecting person for board. — It was the intent of the legislature in stating that the Director of the State Department of Family and Children Services (now Commissioner of Human Resources) shall select for each position on a county board one of the three names submitted by the county commissioners so that the director may be given a choice. 1963-65 Op. Att'y Gen. p. 256.

Commissioner has right to reject names submitted and appoint members. — Since it is the legislative intent of this section to provide the director (now commissioner) a choice, the director has the right to reject the names of the few qualified who are submitted and, of the director's own motion, make appointments to fill the vacancies existing on the county board. 1963-65 Op. Att'y Gen. p. 256.

Appointment of public assistance recipient creates conflict of interest. — Public assistance recipient serving as member of county board of family and children services would have both opportunity and temptation to profit by his or her official duties. For this reason, a conflict of interest would arise in the event that a public assistance recipient is appointed to a county board of family and children services. 1981 Op. Att'y Gen. No. 81-32.

Board member can hold over until successor appointed. — Construing former Code 1933, § 89-105 and Ga. L. 1937, p. 355, §§ 9 and 10 (see O.C.G.A. §§ 45-2-4, 49-3-1, and 49-3-2) together, a county welfare board (now county board of family and children services) member whose term has expired can and should hold over and perform the duties of such office until the member's successor has been duly appointed and qualified. 1948-49 Op. Att'y Gen. p. 466.

Section directory and not mandatory. — The language contained in this section is

directory and not mandatory and, therefore, the Director of the State Department of Family and Children Services (now Commissioner of Human Resources) may name members of a county board in the event that any county board is not named within a reasonable time as provided in that section. 1963-65 Op. Att'y Gen. p. 256.

"Elected" used in broad sense. — While this section uses the word "elected," it is used in a broad sense and would include an election by any body such as a grand jury, as well as election by a popular vote of the qualified voters of a political subdivision of the state; it is used in the statute as the antonym "appointed." If such is the proper meaning to be applied to this word, then it necessarily follows that a member of the county board of education who is selected or elected by the grand jury of a county is ineligible to hold the office of a member of the county board. 1945-47 Op. Att'y Gen. p. 648.

County board member not disqualified as candidate for elective state office. — This section prohibits any member of the county board from serving on that board while the member is an elected officer of the state or any subdivision thereof. A county board member would not be disqualified as a candidate for an elective state office, but the member would be disqualified to hold membership on the county board after election and qualification. 1957 Op. Att'y Gen. p. 34.

Members of the General Assembly are elected officers and would come within the provision of this section. 1948-49 Op. Att'y Gen. p. 723.

County boards and departments of family and children services. — County boards and departments of family and children services are state instrumentalities and their employees are state employees. 1977 Op. Att'y Gen. No. U77-54.

49-3-3. Appointment of county director; bond of county director.

(a) Each county board of family and children services shall recommend to the commissioner of human services one or more names for appointment to the position of county director. The commissioner is designated as the appointing authority for the department and may accept or reject any such recommendation.

(b) The county director shall give bond for the faithful performance of his duties and the faithful accounting of all moneys coming into his hands as such county director, in such a manner and under such terms and conditions as may be prescribed by the Department of Human Services. (Ga. L. 1937, p. 355, § 11; Ga. L. 1951, p. 282, § 1; Ga. L. 2000, p. 240, § 2; Ga. L. 2008, p. 345, § 1/HB 715; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228.)

The 2008 amendment, effective July 1, 2008, in subsection (a), deleted the former first sentence, which read: "The commissioner shall obtain from the State Merit System of Personnel Administration a register of qualified applicants for the position of county director." and, in the second sentence, deleted ", upon procuring from the commissioner that register," following "children services", and deleted "from that register" following "shall recommend".

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted "commissioner of human services" for "commissioner of human resources" in the first sentence; and, in subsection (b), substituted "Department of Human Services" for "Department of Human Resources" at the end.

JUDICIAL DECISIONS

Commissioner not required to ignore considerations of local concern. — If the commissioner determines that the local concern and reaction to the selection of the recommended applicant, arising not from the applicant's race or other impermissible criteria but from the public's perception of the applicant's ability to render them impartial service, would proximately result in the diminution of effectiveness to run the department, and would result in an adverse public image for the county and state departments, the commissioner should not be required to ignore such considerations in the commis-

sioner's capacity as appointing authority. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

Authority to decline county board's recommendation. — As the administrative officer with the express power to make the appointment, it follows by necessary implication that the commissioner has the authority to decline to follow the county board's recommendation. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

County boards and departments of family and children services. — County boards and departments of family and children services

are state instrumentalities and their employees are state employees. 1977 Op. Att'y Gen. No. U77-54.

49-3-3.1. Annual report from county director of department of family and children services; personal appearance.

(a) The county director of the department of family and children services of each county shall provide an annual report no later than December 31 of each year, beginning in the year 2000, to the county board, county commission, and the director of the Division of Family and Children Services. The county director of the department of family and children services of each county shall notify each member of the General Assembly whose legislative district includes any part of that county of the availability of the annual report but shall not be required to distribute copies of the annual report to the members. The report shall include the following information for the 12 month period ending June 30 of that year:

- (1) The number of children for whom the county department has received a complaint of child abuse pursuant to Code Section 19-7-5;
- (2) General demographic data such as gender, race, and age regarding children specified in paragraph (1) of this subsection;
- (3) The number of children taken into county department custody;
- (4) The number of placements of children in county department custody by the type of placement;
- (5) The length of time in county department custody by the number of children; and
- (6) Any other information required by the director of the Division of Family and Children Services.

(b) A majority of the legislative delegation whose members are required to receive notification pursuant to subsection (a) of this Code section shall be authorized to require the director of the department of family and children services of the county which provided that report to appear before that delegation and to answer questions regarding that report and other matters relating to issues of child abuse and child protective services. (Code 1981, § 49-3-3.1, enacted by Ga. L. 2000, p. 240, § 3; Ga. L. 2005, p. 1036, § 38/SB 49.)

Code Commission notes. — Pursuant to was substituted for “Code section” at the Code Section 28-9-5, in 2000, “subsection” end of paragraph (a)(2).

49-3-4. Appointment of staff; salaries; power of commissioner to transfer employees.

(a) The county department staff necessary to administer welfare activities within the county shall be appointed pursuant to the rules and regulations of the Department of Human Services and the State Personnel Administration and subject to the approval of the commissioner of human

services. Staff appointments shall meet the qualifications prescribed by the department.

(b) The salaries of the members of the staff shall be fixed by the county director in conformity with the salary schedule prescribed by the Department of Human Services.

(c) The commissioner shall have power to transfer from one county to another or from one district to another any employee of a county department. (Ga. L. 1937, p. 355, §§ 12, 14; Ga. L. 1951, p. 282, § 1; Ga. L. 1963, p. 222, § 2; Ga. L. 2000, p. 240, § 4; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System of Personnel Administration” in the first sentence of subsection (a). The second 2009 amendment, effective July 1, 2009, in subsection (a), in the first sentence, substituted “Department of Hu-

man Services” for “Department of Human Resources” and substituted “commissioner of human services” for “commissioner of human resources”, and, in subsection (b), substituted “Department of Human Services” for “Department of Human Resources” at the end.

JUDICIAL DECISIONS

No authority of board, superior court, or appellate court to compel promotions. — Neither the Board of Human Resources, the superior court, nor the appellate court has the authority to compel a promotion where the appointing authority has, within the bounds of the authority’s permissible discretions, declined to do so. *Horne v. Skelton*, 152 Ga. App. 654, 263 S.E.2d 528 (1979).

County not “employer” for federal civil rights purposes. — The position of mental health center service coordinator at a county health department is created by the state of Georgia and is governed by the Georgia

State Merit System of Personnel Administration for the Georgia Department of Human Resources with respect to the terms and conditions of employment, including hiring, termination, promotion, demotion, and wage rates. A fortiori, the county is not an “employer” within the meaning of Title VII (42 U.S.C. § 2000e et seq.) of the federal Civil Rights Act of 1964. *Lewis v. DeKalb County*, 569 F. Supp. 11 (N.D. Ga. 1983).

Cited in *Employees Retirement Sys. v. Baughman*, 241 Ga. 339, 245 S.E.2d 282 (1978).

OPINIONS OF THE ATTORNEY GENERAL

County boards and departments of family and children services are state instrumental-

ities and their employees are state employees. 1977 Op. Att’y Gen. No. U77-54.

49-3-5. Powers and duties of county director.

The county director shall be the executive and administrative officer of the county department, shall be responsible for operations and personnel, and shall serve as the secretary of the county board. He shall prepare and submit to the county board for its approval an annual budget of all funds necessary for the county department. He shall prepare annually a full

report of the operations and administration of the county department. (Ga. L. 1937, p. 355, § 12; Ga. L. 1963, p. 222, § 2; Ga. L. 1976, p. 685, § 2.)

49-3-6. Functions of county department.

Subject to the rules and regulations of the Board of Human Services, the county department shall be charged with the administration of all forms of public assistance in the county, including home relief; indoor and outdoor care for those in need; temporary assistance for needy families; old-age assistance; aid to the blind and otherwise disabled; the care and treatment of dependent, neglected, delinquent, and disabled children; and such other welfare activities as shall be delegated to it by the Department of Human Services or by the county commissioners. The county department shall also investigate and pass upon all applications for admission to and discharge from county institutions which provide care and treatment for indigents. If so appointed by a court of competent jurisdiction, the Department of Human Services or the county or district department of family and children services shall perform under the supervision of such court the function of probation officer or agent of the court in any welfare or penal matters which may be before it. (Ga. L. 1937, p. 355, § 13; Ga. L. 1995, p. 1302, § 14; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in the first sentence, and substituted “Department of Human Services” for “Department of Human Resources” in the first and third sentences of this Code section.

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in *In re R.L.M.*, 171 Ga. App. 940, 321 S.E.2d 435 (1984).

OPINIONS OF THE ATTORNEY GENERAL

Heating Energy Assistance Team funds. — The Department of Human Resources may utilize the local departments of family and children services to distribute Heating En-

ergy Assistance Team (HEAT) funds to needy persons as contemplated by the HEAT program. 1983 Op. Att’y Gen. No. 83-8.

49-3-7. Removal of county director for falsification of qualifications.

The State Personnel Board and the State Personnel Administration shall remove from office any county director who has falsified any statement relating to his or her education, social welfare service, or other qualification, in any particular, whether material or immaterial. The application of

the county director for examination, on file with the State Personnel Administration, shall not be allowed to be varied by other evidence offered by the county director; the application itself shall be the controlling factor in the determination of its truth or untruth. (Ga. L. 1945, p. 689, §§ 1, 2; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" twice in this Code section. for "State Merit System of Person-

49-3-8. Destruction of county departmental records.

Any county department of family and children services, at the discretion of the county director, may destroy public assistance case records which have been inactive for three years or more, as well as related statistical and financial forms and reports. A record must be retained beyond the three-year period as long as a federal or state audit of that record is in progress, or if an audit's findings have not been resolved, or if the case in question is the subject of pending administrative or judicial litigation. (Ga. L. 1953, p. 17, § 1; Ga. L. 1982, p. 881, §§ 1, 3.)

CHAPTER 4

PUBLIC ASSISTANCE

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49-4-4.	Residence in state as affecting eligibility for public assistance.	49-4-30.	
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Article 6**Medical Assistance for Aged**

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Article 7**Medical Assistance Generally**

- 49-4140. Short title.
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- 49-4143. Power of Board of Community Health; Board of Medical Assistance abolished.
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- 49-4145. Time limitations on claims for assistance; form of claims.
- 49-4146. Time for action on claim.
- 49-4146.1. (For effective date, see note.) Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations and notify proper authorities; authorization to obtain income eligibility verification from Department of Revenue.
- 49-4146.2. Requirements for voluntary termination of provider agreements by nursing facilities; adjustment of medical assistance rate; decertification.
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- 49-4147. Enforcement of liens, claims, or offsets against assistance.
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- 49-4148. Recovery of assistance from third party liable for sickness, injury, disease, or disability; compromise or waiver of claim; compliance; effective date.
- 49-4149. Lien of Department of Community Health against third parties; subrogation to recipients' insurance claims; assignment of recipients' claims.
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- 49-4-150. Regulations as to maintenance and use of records; certificate as to use of information.
- 49-4-151. Obtaining information for investigations and audits.
- 49-4-152. Research and demonstration projects; pilot projects to provide health care coverage and essential health care services; pharmacy assistance programs.
- 49-4-152.1. Medicaid Prescription Drug Bidding and Rebate Program.
- 49-4-152.2. Rebates for sole-source and multiple-source drugs included in Controlled Medical Assistance Drug List.
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- 49-4-152.4. Department contracts to require refund of prescription drug rebates.
- 49-4-152.5. Restocking fees.
- 49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.
- 49-4-154. Powers and duties retained by Department of Human Resources (Department of Community Health).
- 49-4-155. Department of Community Health to succeed to existing rules, regulations, policies, procedures, and administrative orders.
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- 49-4-156.1. Reimbursement for services rendered under Article 5 of Chapter 6 of this title.
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- 49-4-164. Requirements for selling qualified long-term care insurance partnership policies; rules and regulations; reports.
- 49-4-165. Notice to consumers.
- 49-4-166. Effective date [Repealed].

Article 7B

State False Medicaid Claims Act

- 49-4-168. Definitions.
- 49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.
- 49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation by private person; stay of discovery; receipt of proceeds from civil judgment by private person and Indigent Care Trust Fund.
- 49-4-168.3. Standard of proof; procedure.
- 49-4-168.4. Employee discrimination or harassment by employer while employee pursues civil action under State False Medicaid Claims Act.
- 49-4-168.5. Statute of limitations.
- 49-4-168.6. Venue.

Article 7C

Therapy Services for Children with Disabilities

- 49-4-169. Legislative findings and intent.
- 49-4-169.1. Definitions.
- 49-4-169.2. Services and treatment for categorically needy and medically fragile children.
- 49-4-169.3. Requirements relating to administrative prior approval for services and appeals; statutory construction.

Article 8		Sec.	
Personal Representative to Manage Assistance Payments			Needy Families Program created.
Sec.		49-4-183.	Administration of article by department; promulgation of rules and regulations by board; duties of department.
49-4-170.	Grounds for appointing personal representative; petition by county or district director.	49-4-184.	Eligibility for assistance.
49-4-171.	Hearing on petition; appointment, duties, and removal of representative; court costs waived.	49-4-185.	Sanctions against recipient for failure to comply.
49-4-172.	Appeal from order of appointment or removal.	49-4-186.	Schedule of assistance to eliminate increment in benefits under TANF program as result of child birth during eligibility period.
49-4-173.	Maintenance of records by county or district director; use of facts and findings in other proceedings.	49-4-187.	Assistance for applicants moving into state after receiving assistance from another state.
Article 9		49-4-188.	Assistance for qualified aliens.
Temporary Assistance for Needy Families		49-4-189.	[Reserved].
49-4-180.	Short title.	49-4-190.	Construction of article.
49-4-181.	Definitions.	49-4-191.	Establishment and enforcement of standards and procedures by department.
49-4-182.	Temporary Assistance for	49-4-192.	Establishment of pilot LEARNFARE program.

Cross references. — Workers' compensation, Ch. 9, T. 34. Assisting low or fixed income persons to pay gas and electric bills, § 46-1-5. Powers and duties of Department

of Human Services regarding federal government programs relating to the aging, § 49-6-1 et seq.

JUDICIAL DECISIONS

Coverage for nonresident patients. — An owner/operator of a Georgia nursing home facility was entitled to medicaid reimbursement for nonresident long-term care patients who, after the termination of a reciprocal interstate agreement with South

Carolina governing coverage for such patients, expressed in writing their will and intent to be Georgia residents. *State v. Stuckey Health Care, Inc.*, 189 Ga. App. 126, 375 S.E.2d 235, cert. denied, 189 Ga. App. 913, 375 S.E.2d 235 (1988).

RESEARCH REFERENCES

ALR. — Eligibility for welfare benefits, under maximum-assets limitations, as affected by expenditures or disposal of assets, 19 ALR4th 146.

Eligibility for welfare benefits as affected

by claimant's status as trust beneficiary, 21 ALR4th 729.

Propriety of telephone testimony or hearings in public welfare proceedings, 88 ALR4th 1094.

ARTICLE 1

GENERAL PROVISIONS

49-4-1. Short title.

The short title of this article shall be “Georgia Public Assistance Act of 1965.” (Ga. L. 1965, p. 385, § 1.)

Law reviews. — For note discussing the denial of social security benefits to dependent children pursuant to substitute father provisions as violative of due process, prior

to the 1967 amendments to the Georgia Public Assistance Act (O.C.G.A. § 49-4-1 et seq.), see 15 J. of Pub. L. 349 (1966).

JUDICIAL DECISIONS

Cited in Howell v. Harden, 129 Ga. App. 200, 198 S.E.2d 890 (1973); Tellis v. Saucier, 133 Ga. App. 779, 213 S.E.2d 39 (1975); Dix

v. State, 156 Ga. App. 868, 275 S.E.2d 807 (1981); So v. Ledbetter, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 25 Am. Jur. Pleading and Practice Forms, Welfare, § 25.

49-4-2. Definitions.

As used in this article, the term:

(1) “Department” means the Department of Human Services and includes the county departments of family and children services and the agents, agencies, officers, and employees designated by the commissioner of human services to perform any function vested in the Department of Human Services by this article.

(2) “Public assistance” means payment in or by money, medical care, remedial care, goods, or services to or for the benefit of needy persons under any categories that may be established pursuant to this article.

(3) “Recipient” means a person to whom, or on whose behalf, public assistance is granted. (Ga. L. 1965, p. 385, § 2; Ga. L. 1967, p. 878, § 1; Ga. L. 1977, p. 384, § 19; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” twice in paragraph (1).

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2009, “commissioner of human services” was substituted for “commissioner of human resources” in paragraph (1).

JUDICIAL DECISIONS

Cited in Briarcliff Haven, Inc. v. Department of Human Resources, 403 F. Supp. 1355 (N.D. Ga. 1975).

OPINIONS OF THE ATTORNEY GENERAL

Limiting time for presentation of claims of Medicaid providers. — The Department of Human Resources as administrator of Georgia's Medicaid program (now administered by Department of Community Health) is not prohibited from limiting the time within which claims of providers of Medicaid services must be presented for payment. 1971 Op. Att'y Gen. No. 71-153.

County may donate funds to be used for child day care services as part of the state's Aid to Families with Dependent Children program. 1975 Op. Att'y Gen. No. U75-1.

Appropriation to private day care center not operated as service for eligible children.

— Since the Constitution limits county taxation and expenditures to welfare programs as provided by law, and the only welfare provided by law which may include day care services is the Aid to Families with Dependent Children program, there would be no authority for a county to appropriate money for the private day care center which is not operated as a service for eligible children. 1975 Op. Att'y Gen. No. U75-1.

49-4-3. Establishment of categories of public assistance; powers and duties in administration of article.

(a) The Department of Human Services is authorized to establish any of the following categories of public assistance and to adopt plans combining the administration of such categories of public assistance as the Department of Human Services may elect:

- (1) Old-age assistance;
- (2) Aid to the blind;
- (3) Aid to the disabled;
- (4) Temporary assistance for needy families; and

(5) Aid to the aged, blind, and adult disabled persons under a combined plan adopted pursuant to Title XX of the federal Social Security Act.

(b) This article shall be administered by the Department of Human Services, including the county departments of family and children services acting under the direction and supervision of the commissioner. In administering this article the department, including the county departments acting under the direction and supervision of the director of the Division of Family and Children Services, shall:

- (1) Provide for maximum cooperation with other agencies, public and private, of this state, of other states, and of the federal government in rendering services to maintain and strengthen family life and to help applicants for public assistance and recipients to attain self-support or self-care;

(2) Establish and enforce such rules and regulations as may be necessary or desirable to carry out this article; provided, however, that the commissioner of the Department of Human Services may delegate to the director of the Division of Family and Children Services the responsibility for the development and issuance of procedural manuals;

(3) Cooperate in all necessary respects with agencies of the United States government in the administration of this article, and accept any funds, goods, or services available to the department for public assistance and for other welfare programs and projects;

(4) Enter into reciprocal and cooperative agreements with other agencies of this state and with agencies of any other state relative to the providing of assistance or service to residents and nonresidents; and

(5) Make reports at such times and in such form as may be required by agencies of the United States government. (Ga. L. 1965, p. 385, § 3; Ga. L. 1967, p. 878, §§ 2, 3; Ga. L. 1982, p. 883, §§ 1, 2; Ga. L. 1984, p. 22, § 49; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" twice in the introductory language of subsection (a), in the first sentence of the introductory language of subsection (b), and in paragraph (b)(2).

Cross references. — Duty and authority of department to enforce support duty of parents whose children are receiving public assistance from department, § 19-11-1 et seq.

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title XX of the federal Social Security Act, referred to in paragraph (a)(5) of this Code section, is codified at 42 U.S.C. § 1397 et seq.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in *Cox v. Cox ex rel. State Dep't of Human Resources*, 255 Ga. 6, 334 S.E.2d 683 (1985).

OPINIONS OF THE ATTORNEY GENERAL

Limiting time for presentation of claims of medicaid providers. — The Department of Human Resources as administrator of Georgia's Medicaid program (now administered by Department of Community Health)

is not prohibited from limiting the time within which claims of providers of medicaid services must be presented for payment. 1971 Op. Att'y Gen. No. 71-153.

RESEARCH REFERENCES

ALR. — Eligibility of strikers to obtain public assistance, 57 ALR3d 1303.

49-4-4. Residence in state as affecting eligibility for public assistance.

Public assistance shall be awarded to, or on behalf of, any individual who is a resident of this state and is otherwise eligible therefor under one of the categories established pursuant to this article, as determined in accordance with the regulations of the board; provided, however, that residence in this state in excess of one year may not be required with respect to any individual under any category; and provided, further, that with respect to "medical assistance" no residence requirement which excludes any individual who resides in this state may be imposed. (Ga. L. 1965, p. 385, § 4; Ga. L. 1967, p. 878, § 4.)

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

RESEARCH REFERENCES

<p>ALR. — Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.</p>	<p>Eligibility of strikers to obtain public assistance, 57 ALR3d 1303.</p>
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49-4-5. Determining amount of public assistance.

The amount of public assistance which any person shall receive shall be determined in accordance with regulations approved by the board. (Ga. L. 1965, p. 385, § 5.)

JUDICIAL DECISIONS

<p>Cited in <i>Health Facility Invs., Inc. v. Georgia Dep't of Human Resources</i>, 238 Ga. 383,</p>	<p>233 S.E.2d 351 (1977); <i>Stewart v. State</i>, 246 Ga. 70, 268 S.E.2d 906 (1980).</p>
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49-4-6. Reserves, income, and resources to be disregarded.

(a) In determining eligibility for and the amount and kind of public assistance to be provided, the board shall prescribe by regulations reasonable emergency reserves and the income and resources which may be exempt and disregarded. With respect to any category of assistance, the income and resources to be disregarded shall not be in excess of the amounts and kinds authorized under the federal Social Security Act and shall not be less than the amounts and kinds of income and resources required to be disregarded by the federal Social Security Act and any other act of Congress relating to the assistance programs in which federal financial participation is authorized under Titles IV, XVI, XIX, and XX of the federal Social Security Act.

(b) (See editor's notes.) For purposes of applying the \$50.00 child support disregard provided for in Title IV of the federal Social Security Act, amounts paid by the Social Security Administration under the Old Age Survivors and Disability Insurance (OASDI) program, payments made by the United States Department of Veterans Affairs to the family, and any other benefits not assignable to the state pursuant to Title IV of the federal Social Security Act shall not be considered child support.

(c) Notwithstanding any other provision of this Code section, this chapter, or state law, to the extent that such disregard does not violate federal law or terminate or decrease the state's eligibility for federal funding for public assistance or for disabled persons, the Department of Human Services, the Department of Community Health, and their successors shall disregard for the purpose of eligibility for public assistance or assistance for disabled persons any funds or property held in trust for a disabled person by a community trust created and administered in accordance with Chapter 10 of Title 30, a trust for a person with one or more impairments with substantially similar provisions for distributions, or any noncash distributions from such trusts. (Ga. L. 1965, p. 385, § 14; Ga. L. 1967, p. 878, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1987, p. 1435, § 1; Ga. L. 1990, p. 45, § 1; Ga. L. 1996, p. 804, § 3; Ga. L. 1999, p. 296, § 24; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" near the middle of subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "community trust" was substituted for "Community Trust" in subsection (c).

Editor's notes. — Ga. L. 1987, p. 1435, § 5(b), not codified by the General Assembly, provided: "Subsection (b) of Code Section 49-4-6, as amended by Section 1 of this Act, is repealed effective on the date on which the federal acts referenced herein or any federal regulations or interpretations of such act or regulations by the federal agency or a judicial decision binding on the State of

Georgia are amended or changed to allow federal financial participation in AFDC payments which treat social security disability benefits or veterans' benefits in the same manner as other child support payments."

Those provisions of Title IV of the federal Social Security Act relating to the child support disregard (42 U.S.C. § 602(a)(8)(A)(vi)) were repealed by § 103 of P.L. 104-193, the "Personal Responsibility & Work Opportunity Reconciliation Act of 1996."

U.S. Code. — Titles IV, XVI, XIX, and XX of the federal Social Security Act, referred to in this Code section, are codified at 42 U.S.C. §§ 601 et seq., 1381 et seq., 1396 et seq., 1397 et seq., respectively.

JUDICIAL DECISIONS

Validity of 1987 amendment. — The 1987 amendment to O.C.G.A. § 49-4-6 was presumed valid notwithstanding a contention that the amendment was passed in violation of the Fiscal Note Act (O.C.G.A. § 28-5-42), which mandates that "any bill having a significant impact on the anticipated revenue

or expenditure level of any state department ... or other state agency must be introduced no later than the twentieth day of any session." *Wilson v. Ledbetter*, 194 Ga. App. 32, 389 S.E.2d 771 (1989), rev'd on other grounds, 260 Ga. 180, 390 S.E.2d 846 (1990).

RESEARCH REFERENCES

ALR. — Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 ALR3d 772.

Validity of statutes or regulations denying

welfare benefits to claimants who transfer property for less than its full value, 24 ALR4th 215.

49-4-7. Receipt of compensation for residence sold by government action not to affect eligibility.

Notwithstanding any other law, rule, or regulation to the contrary, an individual who is otherwise qualified to receive any public assistance administered by the department shall not become ineligible to continue to receive such benefits because of the receipt of compensation by such individual from the sale or acquisition of any real estate used as the residence of such individual as the result of displacement through the necessity of governmental action which directly or indirectly causes the sale or acquisition of such property. Such individual may receive such compensation; hold, invest, and reinvest the proceeds thereof in any manner whatsoever; and continue to receive such benefits if he shall remain otherwise qualified; provided, however, this article shall not become effective until approved by the United States Department of Health and Human Services. (Ga. L. 1963, p. 616, § 1.)

49-4-8. Application for public assistance.

Applications for public assistance shall be submitted to and accepted by the county department of the county of the applicant's residence from or on behalf of any person who believes himself eligible for public assistance. Such applications shall be made in the manner and form prescribed by the Department of Human Services and shall contain such information as the department shall require. (Ga. L. 1965, p. 385, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the last sentence of this Code section.

49-4-9. Investigation and record concerning applicant.

Whenever a county department shall receive an application for public assistance, the county department shall promptly make an investigation and record of the circumstances of the applicant in order to ascertain the facts supporting the application and to obtain such other information as may be required by the Department of Human Services. (Ga. L. 1965, p. 385, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” at the end of this Code section.

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

49-4-10. Physical examination of applicant.

With respect to applicants for any category of public assistance authorized under Code Section 49-4-3, the department may require physical examinations of any applicant and may require the results thereof to be recorded by the examining physician on a form furnished by the department. Upon receipt of the form from the examining physician, the county department shall forward it to the department, whose duty it shall be to review the medical information contained thereon and determine therefrom whether the applicant meets the medical requirements for assistance under this article. When said decision has been made by the department, the county department will be notified and bound thereby. (Ga. L. 1965, p. 385, § 18.)

49-4-11. Award and payment of public assistance.

(a) Upon the completion of the investigation under Code Section 49-4-9, the county department shall decide whether the applicant is eligible for assistance under this article and determine, in accordance with the rules and regulations of the Board of Human Services, the amount and kind of such assistance and the date on which such assistance shall begin. After a determination has been made as to the eligibility for and the type and amount of assistance to be provided, such assistance shall be furnished with reasonable promptness to all eligible persons in accordance with regulations of the board.

(b) Money payments of public assistance shall be made by check or electronic transfer in accordance with the regulations of the board. (Ga. L. 1965, p. 385, § 8; Ga. L. 1997, p. 1021, § 1; Ga. L. 2009, p. 453, § 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in the first sentence of subsection (a).

Editor’s notes. — Ga. L. 1997, p. 1021,

§ 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Cited in *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

49-4-12. Periodic redetermination of award; reporting changes in recipient's circumstances; review by department.

(a) All public assistance grants made under this article shall be reconsidered by the county departments of family and children services as frequently as may be required by rules of the Board of Human Services; but in every case the county department shall make such reconsideration at least once each year. After such further investigation as the commissioner may deem necessary, the amount of public assistance may be changed or may be entirely withdrawn if it is found by the department that any such grant has been made erroneously or if it is found that the recipient's circumstances have altered sufficiently to warrant such action.

(b) If, at any time during the continuance of public assistance, the recipient thereof becomes possessed of income or resources in excess of the amount previously reported by him or if other changes shall occur in the circumstances previously reported by him which would alter either his need or his eligibility, it shall be his duty to notify the county department of such fact immediately on the receipt or possession of such additional income or resources or on the change of circumstances.

(c) The department may also, upon its own motion, review any decision of a county department and may consider any application upon which a decision has not been made by the county department within a reasonable time. Where the department, on its own motion, reviews a decision of a county department or considers applications upon which a decision has not been made, it may make such additional investigation as it may deem necessary; and it shall determine whether the applicant shall be granted assistance and the amount of such assistance and whether assistance being paid to a recipient shall be modified or canceled. Any applicant or recipient affected by such a decision of the department shall, upon request, be given reasonable notice and opportunity for a hearing by the department. (Ga. L. 1965, p. 385, § 9; Ga. L. 2009, p. 453, § 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Board of Human Services" for "Board of Human Resources" in the first sentence of subsection (a).

JUDICIAL DECISIONS

Cited in *Cummings v. State*, 143 Ga. App. 811, 240 S.E.2d 112 (1977).

RESEARCH REFERENCES

ALR. — Personal injury recovery as affecting eligibility for, or duty to reimburse, public welfare assistance, 80 ALR3d 772.

49-4-13. Hearings; appeal.

(a) Except as provided in subsection (b) of this Code section, an applicant for or recipient of public assistance who is aggrieved by the action or inaction of the department, including any county department of family and children services, shall be entitled to a hearing. Each applicant or recipient shall be notified of his or her right to a hearing. Upon request for such hearing, reasonable notice of the time and place thereof shall be given to such applicant or recipient. Such hearing shall be conducted by the Office of State Administrative Hearings in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," the rules and regulations of the Office of State Administrative Hearings, and the rules and regulations prescribed by the board. The decision of the commissioner on any appeal shall be final, subject to the right to judicial review of contested cases under Chapter 13 of Title 50.

(b) An applicant for or recipient of assistance under Article 9 of this chapter, the "Temporary Assistance for Needy Families Act," shall be authorized to request and receive a hearing to challenge any denial, reduction, or termination of assistance based upon any action by the department, including any county department of family and children services. Nothing contained in this subsection shall operate to create an entitlement to the receipt of assistance under the TANF program. (Ga. L. 1965, p. 385, § 12; Ga. L. 1997, p. 1021, § 2.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 2804 (1997).

Law reviews. — For article commenting

JUDICIAL DECISIONS

The language "shall be final" in Ga. L. 1965, p. 385, § 12 (see O.C.G.A. § 49-4-13) should not be read to foreclose review under the Georgia Administrative Procedure Act, Ga. L. 1965, p. 283, § 1 (see O.C.G.A. § 50-13-1). Department of Human Resources v. Williams, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Judicial review requirements met. — All requirements of Ga. L. 1965, p. 283, § 1 (see

O.C.G.A. § 50-13-1) for judicial review are met by decisions under Ga. L. 1965, p. 385, § 12 (see O.C.G.A. § 49-4-13). Department of Human Resources v. Williams, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Cited in Howell v. Harden, 129 Ga. App. 200, 198 S.E.2d 890 (1973); Ga. Dep't of Cmty. Health v. Medders, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

49-4-14. Regulations as to records; use or disclosure of information; penalty.

(a) The board is directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Department of Human Services, including the county departments, relating to public assistance. Except as otherwise provided in this Code

section, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of public assistance to purposes directly connected with the administration of public assistance. The board is authorized in its discretion to include in such regulations provision for the public to have access to the records of disbursement or payment of public assistance made after March 30, 1965.

(b) No person who obtains information by virtue of any regulation made pursuant to subsection (a) of this Code section shall use such information for commercial or political purposes.

(c) Any person violating subsection (b) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1965, p. 385, §§ 10, 11; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the first sentence of subsection (a).

49-4-15. Fraud in obtaining public assistance, food stamps, or Medicaid; penalties; recovery of overpayments.

(a) Any person who by means of a false statement, failure to disclose information, or impersonation, or by other fraudulent device, obtains or attempts to obtain, or any person who knowingly or intentionally aids or abets such person in the obtaining or attempting to obtain:

(1) Any grant or payment of public assistance, food stamps, or medical assistance (Medicaid) to which he is not entitled;

(2) A larger amount of public assistance, food stamp allotment, or medical assistance (Medicaid) than that to which he is entitled; or

(3) Payment of any forfeited grant of public assistance;

or any person who, with intent to defraud the department, aids or abets in the buying or in any way disposing of the real property of a recipient of public assistance shall be guilty of a misdemeanor unless the total amount of the value of public assistance, food stamps, and medical assistance (Medicaid) so obtained exceeds \$500.00, in which event such person shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than five years. In determining the amount of value of public assistance, food stamps, and medical assistance obtained by false statement, failure to disclose information, or impersonation, or other fraudulent device, the total amount obtained during any uninterrupted period of time shall be treated as one continuing offense.

(b) It shall be a fraudulent device within the meaning of subsection (a) of this Code section, and punishable as therein provided, for any person:

(1) Knowingly to use, alter, or transfer food stamp coupons or authorizations to purchase food stamp coupons in any manner not authorized by law;

(2) Knowingly to possess food stamp coupons or authorizations to purchase food stamp coupons when he or she is not authorized by law to possess them;

(3) Knowingly to possess or redeem food stamp coupons or benefits when he or she is not authorized by law to possess or redeem them; or

(4) Knowingly to use or redeem food stamp coupons or benefits in any manner or for purposes not authorized by law.

(c)(1) Any person who obtains any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(2) Any person who intentionally, with knowledge of the fraud, aids or abets any recipient of public assistance in obtaining or attempting to obtain any payment of public assistance to which the recipient is not entitled or a payment in excess of that to which he is entitled shall also be liable to the state for the amount of such payment.

(3) Any person who receives any payment of public assistance to which he is not entitled or in excess of that to which he is entitled shall be liable to the state for the amount of such overpayment.

(4) Subject to the limitations provided in this paragraph, the amount of such overpayment may be recovered by civil action and, if the person receiving such overpayment continues on assistance, by proportionate reduction of future public assistance grants, in accordance with regulations of the board which shall conform to the federal Social Security Act and federal regulations promulgated pursuant thereto, until the excess amount has been paid. In any case in which, under this subsection, a person is liable to repay any sum, such sum may be collected without interest by civil action brought in the name of the department. Any repayment required by this subsection may be waived by the department, and the method of repayment, if any, including recoupments from current assistance grants, shall be determined by the department. Recoupment may be initiated without regard to whether the department has obtained a judgment in a civil action but shall not be initiated prior to notice and an opportunity for a hearing in accordance with this article. The department shall make such waivers and determinations of repayment and the manner of repayment in accordance with regulations of the board which shall conform to the federal Social Security Act and the federal regulations promulgated pursuant thereto.

(d) Any felony offense under this Code section may be prosecuted by accusation as provided in Code Section 17-7-70.1.

(e)(1) Prior to the filing of an accusation or the return of an indictment, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation of this Code section without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Ga. L. 1965, p. 385, § 13; Ga. L. 1973, p. 183, § 1; Ga. L. 1975, p. 477, § 1; Ga. L. 1976, p. 1490, § 1; Ga. L. 1978, p. 994, § 1; Ga. L. 1978, p. 1964, § 1; Ga. L. 1989, p. 466, § 1; Ga. L. 1996, p. 1517, §§ 1, 1.2; Ga. L. 1997, p. 1021, § 3.)

Cross references. — Fraud and related offenses, Art. 4, Ch. 9, T. 16.

Code Commission notes. — Ga. L. 1996, p. 1517, §§ 1 and 1.2 both enacted a subsection (d). Pursuant to Code Section 28-9-5, the subsection (d) enacted by § 1.2 was redesignated as subsection (f). See the Editor's notes.

Editor's notes. — Ga. L. 1996, p. 1517, § 1.1, not codified by the General Assembly, provided: "Section 1.2 [subsection (f)] of this Act shall be known and may be cited as the 'Two Strikes and You're Off Act.'" and § 2, not codified by the General Assembly, provided for severability.

Ga. L. 1996, p. 1517, § 3, not codified by the General Assembly, provided: "No later

than July 1, 1996, the Department of Human Resources shall request from the appropriate federal agencies any waivers necessary to implement any part of this Act. Each portion of this Act for which such waiver is required shall become effective only if the waiver is obtained, and in that event shall become effective upon the ninetieth day following the receipt of such waiver. The remainder of this Act shall become effective July 1, 1996."

Pursuant to Ga. L. 1996, p. 1517, § 3, waivers were applied for regarding those provisions of subsection (f) relating to public assistance. However, passage of the federal "Personal Responsibility and Work Opportunity Reconciliation Act of 1996" eliminated the need for such waivers, effec-

tive July 1, 1997. The provisions of subsection (f) enacted by Ga. L. 1996, p. 1517, § 1.2 regarding medical assistance and food stamps did not become effective because the requisite federal waivers were not obtained.

Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — The federal Social Security

Act, referred to in paragraph (c)(4) of this Code section, is codified at 42 U.S.C. § 301 et seq.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

For review of 1996 social services legislation, see 13 Ga. U. L. Rev. 310 (1996).

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Constitutionality. — This section is not unconstitutionally vague in that the statute makes it a crime to receive public assistance to which a person is “not entitled” without defining “entitlement” or referring to statutes, rules, or regulations pursuant to which entitlement is determined. *Stewart v. State*, 246 Ga. 70, 268 S.E.2d 906 (1980).

Construction of “may” in waiver clause. — The word “may” in this section’s waiver clause affects the rights of needy dependent children to receive financial assistance under the Georgia Aid to Families with Dependent Children; therefore, it is clear that the word “may” must be construed as mandatory rather than permissive. *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972).

Commissioner required to exercise discretion before recouping overpayments. — This section requires the director of the Department of Family and Children Services (now Commissioner of Human Resources) to exercise discretion by considering the need of dependent children before recouping overpayments in Aid to Families with Dependent Children. *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972).

Effect of state’s failure to offer certified copy of regulations. — The state fell short of the required proof for felony conviction by failing to offer in evidence a certified copy of the regulations of the Department of Human Resources. *Dix v. State*, 156 Ga. App. 868, 275 S.E.2d 807 (1981).

Guilty plea not bar to prosecution for subsequent fraud. — Defendant’s plea of

guilty to fraudulently obtaining \$3,796 in public assistance payments between March 1985 and March 1986, would not bar the state from prosecuting defendant for the subsequent fraudulent obtaining of \$1,585 in public assistance payments between August 1987 and January 1988. *Neal v. State*, 198 Ga. App. 13, 400 S.E.2d 375 (1990).

Repayment by custodial parent excuses non-custodial’s non-payment. — A noncustodial father was held to be not liable for child support overpayments where the evidence demonstrated that the custodial parent, the mother, was in the process of making repayment. *Johnson v. Department of Human Resources*, 204 Ga. App. 23, 418 S.E.2d 401 (1992).

Sufficiency of evidence. — Although the evidence was sufficient to prove that defendant committed fraud that resulted in defendant obtaining more public assistance than defendant was entitled to receive under O.C.G.A. § 49-4-15(a), the state failed to prove that the amount exceeded \$500. *Ousley v. State*, 296 Ga. App. 486, 675 S.E.2d 226 (2009).

Cited in *Anderson v. Department of Family & Children Servs.*, 118 Ga. App. 318, 163 S.E.2d 328 (1968); *Gill v. State*, 141 Ga. App. 823, 234 S.E.2d 665 (1977); *Moore v. State*, 148 Ga. App. 14, 251 S.E.2d 17 (1978); *State v. Germany*, 245 Ga. 326, 265 S.E.2d 13 (1980); *Graham v. State*, 154 Ga. App. 198, 267 S.E.2d 842 (1980); *In re Judge No. 491*, 249 Ga. 30, 287 S.E.2d 2 (1982).

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Liability provided for in Ga. L. 1965, p. 385, § 13 (see O.C.G.A. § 49-4-15) survives the eath of a recipient and constitutes a claim against the recipient’s estate even if

considered as a cause of action in tort rather than a cause of action in contract inasmuch as Ga. L. 1952, p. 224, § 1 (see O.C.G.A. § 9-2-41) provides that a cause of action in

tort shall survive the death of the tortfeasor where the tortfeasor received a benefit from the tort. 1965-66 Op. Att’y Gen. No. 66-250.

RESEARCH REFERENCES

ALR. — Reimbursement of public for financial assistance to aged persons, 29 ALR2d 731.

Criminal liability for wrongfully obtaining unemployment benefits, 80 ALR3d 1280.

Criminal liability in connection with application for, or receipt of, public relief or welfare payments, 22 ALR4th 534.

Imposition of civil penalties, under state statute, upon medical practitioner for fraud

in connection with claims under medicaid, medicare, or similar welfare programs for providing medical services, 32 ALR4th 671.

Criminal liability of pharmacy or pharmacist for welfare fraud in connection with supplying prescription drugs, 16 ALR5th 390.

Liability of state or federal government for losses associated with distribution of food stamps, 116 ALR Fed. 457.

49-4-15.1. Examination of financial records in instances of alleged fraud.

The department may examine any books, papers, or memoranda reflecting the income of, or financial records bearing upon the determination of the eligibility of, recipients in instances of alleged fraud by recipients of food stamps and public assistance. This process may be implemented by means of a subpoena which may be issued by the commissioner of human services, upon the advice of the State Department of Law. In order to consider the issuance of such subpoenas, the director of the department’s office of fraud and abuse must personally make application in writing to the commissioner of human services specifying why such information is necessary. If issued, such subpoenas shall compel the production of relevant documents. Subpoenas shall be served in the same manner as if issued by a superior court. If any person fails to obey a subpoena issued and served under this Code section with respect to any matter germane to the department’s investigation, on application of the department, through the commissioner of human services or the commissioner’s duly authorized representative, the superior court of the county in which the documents were required to be produced may issue an order requiring the person to comply with the subpoena and to produce the relevant documents. (Code 1981, § 49-4-15.1, enacted by Ga. L. 1987, p. 1435, § 2; Ga. L. 1997, p. 1021, § 4; Ga. L. 2009, p. 453, § 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human resources” three times in this Code section.

Editor’s notes. — Ga. L. 1997, p. 1021,

§ 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

49-4-16. Research, demonstration, and work experience programs; surplus food distribution.

(a) Except as modified by and pursuant to the provisions of this article the same provisions concerning eligibility for assistance as obtain with respect to old-age assistance, aid to the blind, temporary assistance for needy families, and aid to the totally and permanently disabled shall remain in force and effect.

(b) The department is authorized to enter into agreements with departments and agencies of the government of the United States for the purposes of accepting grants, providing matching funds, and administering of such grants and funds, in accordance with regulations to be promulgated, for research and demonstration projects under Title XI, Section 1115, of the federal Social Security Act, without regard to the factor of state wideness and such other factors as may be required to be waived by the terms of the federal grant. The department also shall be authorized to participate in work experience or any other projects authorized under Title V of the Economic Opportunity Act of 1964, P.L. 88-452, 78 Stat. 508, and in the distribution of surplus food through a food stamp program under 7 U.S.C., Section 2013. (Ga. L. 1965, p. 385, § 15; Ga. L. 1994, p. 97, § 49; Ga. L. 1997, p. 1021, § 7.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title XI, Section 1115 of the federal Social Security Act, referred to in this section, is codified at 42 U.S.C. § 1315.

Title V of the federal Economic Opportu-

nity Act of 1964, referred to in this Code section, was formerly codified at 42 U.S.C. § 2921 et seq. but was repealed by Pub. L. 97-35, Title VI, § 683 (a).

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

49-4-17. Funding costs of assistance and administration; county participation not required.

The cost of administration and the cost of public assistance provided under any of the categories of public assistance authorized under Code Section 49-4-3 shall be met from such funds as shall be made available therefor from state and federal appropriations. No county shall be required to participate in the cost of such public assistance or in the cost of the administration thereof. (Ga. L. 1965, p. 385, § 17; Ga. L. 1970, p. 451, § 1.)

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FICA contributions considered as costs of administration. — For purposes of this section, social security (FICA) employer contri-

butions can be considered as "costs of administration" of public assistance. 1971 Op. Att'y Gen. No. 71-36.

49-4-17.1. Establishment of pilot community work experience programs.

Repealed by Ga. L. 1986, p. 410, § 1, effective July 1, 1986.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 1281 and Ga. L. 1984, p. 22.

49-4-18. Article construed with federal Social Security Act; adoption of rules to comply with federal act.

It is the intention of the General Assembly that this article be construed consistent with the federal Social Security Act, and any provision of this article found to be in conflict with the federal Social Security Act shall be deemed to be void and of no effect. It is further the intention of the General Assembly, in view of the joint state and federal financial participation in the assistance programs, that the department shall be authorized to adopt such regulations as may be necessary to comply with the requirements of the federal Social Security Act. (Ga. L. 1965, p. 385, § 16.)

U.S. Code. — The federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 301 et seq.

JUDICIAL DECISIONS

Cited in James v. Harden, 136 Ga. App. 207, 221 S.E.2d 67 (1975); Cox v. Dep't of Human Resources, 255 Ga. 6, 334 S.E.2d 683 (1985).

RESEARCH REFERENCES

ALR. — Judicial questions regarding Federal Social Security Act and state legislation adopted in anticipation of or after the passage of that act, to set up "state plan" contemplated by it, 100 ALR 697; 106 ALR 243; 108 ALR 613; 109 ALR 1346; 118 ALR 1220; 121 ALR 1002.

Validity of statutes or regulations denying welfare benefits to claimants who transfer property for less than its full value, 24 ALR4th 215.

49-4-19. Social assistance register.

It shall be the duty of the department to establish and maintain a social assistance register and to provide for the listing in such register of groups, associations, organizations, and individuals who notify the department or any county department of family and children services that they are willing to assist citizens who are receiving public assistance or who need aid to improve or ensure the quality of their lives. The department shall provide for the dissemination of the names of such entities and individuals to those in need of assistance. It shall be the further duty of the department to publicize the existence of the social assistance register and to inform the

public of the opportunities which members of the public have to enrich the lives of others. (Code 1981, § 49-4-19, enacted by Ga. L. 1997, p. 1021, § 4A.)

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

ARTICLE 2

OLD-AGE ASSISTANCE

Cross references. — Ombudsman program for elderly persons residing in long-term care facilities, § 31-8-50 et seq.

Reporting of abuse or exploitation of elderly persons residing in long-term care facilities, § 31-8-80 et seq.

49-4-30. Short title.

This article may be cited as the “Old-Age Assistance Act.” (Ga. L. 1937, p. 311, § 20; Ga. L. 1982, p. 3, § 49.)

49-4-31. Definitions.

As used in this article, the term:

(1) “Applicant” means a person who has applied for assistance under this article.

(2) “Assistance” means money payments to, medical care in behalf of, or any type of remedial care recognized under state law in behalf of needy individuals who are 65 years of age or older but does not include any such payments to or care in behalf of any individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual who is a patient in an institution for tuberculosis or mental health or developmental disability services.

(3) “Recipient” means a person who has received assistance under this article. (Ga. L. 1937, p. 311, § 1; Ga. L. 1957, p. 368, § 1; Ga. L. 1962, p. 683, § 1; Ga. L. 2009, p. 453, § 3-6/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “developmental disability services” for “mental retardation services” at the end of paragraph (2).

49-4-32. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any person who:

(1) Is 65 years of age or older;

(2) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health;

(3) Is not, at the time of receiving assistance, an inmate or patient of any public institution, except as a patient in a medical institution. An inmate or patient of such an institution may, however, make application for such assistance but the assistance, if granted, shall not begin until after he ceases to be an inmate;

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(5) Has been a bona fide resident of this state for not less than one year; and

(6) Is not receiving assistance under Article 3 of this chapter.

(b) No applicant shall be required to subscribe to a pauper's oath in order to be eligible for assistance under this article.

(c) Final conviction of a crime or criminal offense and detention of one so convicted either by this state or by any subdivision thereof shall constitute a forfeiture or suspension of all rights to assistance under this article but only during the period of actual confinement. (Ga. L. 1937, p. 311, § 2.)

JUDICIAL DECISIONS

Cited in Bryson v. Burson, 308 F. Supp. 1170 (N.D. Ga. 1969).

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United States Supreme Court decisions control validity of residency statutes. — The validity of the residency statutes concerning eligibility for public assistance would be held invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att'y Gen. No. 69-238.

State employees not disqualified from re-

ceiving assistance. — If an applicant for old age assistance is otherwise qualified, the fact that such applicant is employed by the state would not disqualify the applicant from receiving old age assistance to provide the applicant with a reasonable subsistence compatible with decency and health. 1945-47 Op. Att'y Gen. p. 645.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 77, 85.

ALR. — Requisite residence for purposes of old age assistance, 43 ALR2d 1427.

Social Security Acts: requisite of employment as affected by family relationship be-

tween alleged employer and employee, 8 ALR3d 696.

Unemployment compensation: eligibility of employee laid off according to employer's mandatory retirement plan, 50 ALR3d 880.

49-4-33. Duties of department under this article.

The department shall:

- (1) Supervise the administration of assistance under this article by the county departments;
- (2) Take such action as may be necessary or desirable for carrying out this article;
- (3) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable; and
- (4) Publish an annual report and such interim reports as may be necessary. (Ga. L. 1937, p. 311, § 4.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 75, 76.

49-4-34. Duties of county departments under this article.

The county departments shall:

- (1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the board pursuant to this article;
- (2) Report to the department at such times and in such manner and form as the department may from time to time direct; and
- (3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1937, p. 311, § 5.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 75, 76.

49-4-35. Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1937, p. 311, § 11; Ga. L. 1950, p. 316, § 1.)

49-4-36. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1937, p. 311, § 16; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the first sentence of this Code section.

49-4-37. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1937, p. 311, § 19.)

49-4-38. Roll book of employees.

Each county board shall maintain for public information a roll book giving the name and address of and salary paid each employee of the county board in the county. (Ga. L. 1937, p. 311, § 19A.)

ARTICLE 3

AID TO THE BLIND

Cross references. — Georgia Industries for the Blind, Ch. 2, T. 30. Blindness education, screening, and treatment program, § 31-1-23.

49-4-50. Short title.

This article may be cited as the "Aid to the Blind Act." (Ga. L. 1937, p. 568, § 23.)

49-4-51. Definitions; when person considered blind.

(a) As used in this article, the term:

(1) “Applicant” means a person who has applied for assistance under this article.

(2) “Assistance” means money payments to or hospital care in behalf of needy blind individuals but does not include any such payments to or care in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) nor any individual who:

(A) Is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) “Ophthalmologist” means a physician who is licensed to practice medicine in this state and who is actively engaged in the treatment of diseases of the human eye.

(4) “Optometrist” means an individual who is licensed and registered to practice optometry in this state and who is actively engaged in the measurement of the powers of vision of the human eye.

(5) “Recipient” means a person who has received assistance under this article.

(6) “Supplementary services” means services other than money payments to blind persons in need.

(b) A person shall be considered blind for the purposes of this article if his vision, with correcting glasses, is so defective as to prevent the performance of activities for which eyesight is essential. The department shall promulgate rules and regulations stating, in terms of ophthalmic measurements, the amount of visual acuity which an applicant may have and still be eligible for assistance under this article. (Ga. L. 1937, p. 568, §§ 1, 2; Ga. L. 1952, p. 233, § 1; Ga. L. 1957, p. 368, § 4; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228.)

The 2009 amendment, effective July 1, 2009, in subparagraph (a)(2)(A), substituted “developmental disability” for “mental retardation”; and, in subparagraph (a)(2)(B), substituted “developmentally disabled” for “mentally retarded”.

49-4-52. Eligibility for assistance under this article.

(a) Assistance shall be granted under this article to any blind person who:

(1) Does not have sufficient income or other resources to provide a reasonable subsistence compatible with decency and health, except that, after March 1, 1961, in making such determination, the first \$85.00 per month of earned income plus one-half of earned income in excess of \$85.00 per month shall be disregarded;

(2) Has been a bona fide resident of the state for not less than one year;

(3) Is not receiving old-age assistance; and

(4) Is not publicly soliciting alms in any part of this state by the wearing, carrying, or exhibiting of signs denoting blindness, by the carrying of receptacles for the reception of alms, by the doing of such acts by proxy, or by begging from house to house.

(b) All assistance under this article shall be suspended in the event of and during the period of confinement in any public penal institution after final conviction of a crime against the laws of this state or any political subdivision thereof. (Ga. L. 1937, p. 568, § 3; Ga. L. 1952, p. 233, §§ 4, 6; Ga. L. 1961, p. 415, § 1; Ga. L. 1965, p. 385, § 19.)

JUDICIAL DECISIONS

Cited in *Bryson v. Burson*, 308 F. Supp. 1170 (N.D. Ga. 1969).

OPINIONS OF THE ATTORNEY GENERAL

United States Supreme Court decisions control validity of residency statutes. — The validity of the residency statutes concerning eligibility for public assistance would be held

invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att'y Gen. No. 69-238.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 188.

ALR. — Status of one as poor person for purposes of statutes entitling him to relief or providing for compensation of persons who render services or aid, as affected by extent of his financial resources, 98 ALR 870.

Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 ALR5th 455.

49-4-53. Duties of department under this article.

The department shall:

(1) Supervise the administration of assistance under this article by the county departments;

(2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;

(3) Establish the procedure to be followed in securing a competent medical examination for the purpose of determining blindness in the individual applicant for assistance;

(4) Prescribe the form of and print and supply to the county departments such forms as it may deem necessary and advisable;

(5) Publish an annual report and such interim reports as may be necessary;

(6) Designate a suitable number of ophthalmologists and optometrists to examine applicants and recipients of assistance to the blind;

(7) Fix the fees to be paid to ophthalmologists and optometrists for examinations of applicants, such fees to be paid out of funds allocated to the department or to the county departments; and

(8) Initiate or cooperate with other agencies in developing measures for the prevention of blindness; the restoration of eyesight; the vocational adjustment of blind persons, including employment in regular industries, independent business, sheltered workshops, or home industry; and the instruction of the adult blind in their homes. (Ga. L. 1937, p. 568, § 5; Ga. L. 1952, p. 233, § 2.)

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189 et seq.

49-4-54. Duties of county departments under this article.

The county departments shall:

(1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the Board of Human Services pursuant to this article;

(2) Report to the Department of Human Services at such times and in such manner and form as the department may from time to time direct; and

(3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1937, p. 568, § 6; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in paragraph (1), and substituted “Department of Human Services” for “Department of Human Resources” in paragraph (2).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189 et seq.

49-4-55. Examination of applicant by ophthalmologist or optometrist.

No application for assistance under this article shall be approved until the applicant has been examined by an ophthalmologist or optometrist designated or approved by the department to make such examinations. The examining ophthalmologist or optometrist shall certify the findings of the examination in writing upon forms provided by the department. (Ga. L. 1937, p. 568, § 9; Ga. L. 1952, p. 233, § 3.)

Cross references. — Licensing of optometrists generally, Ch. 30, T. 43.

49-4-56. Reexamination of recipient's eyesight; furnishing information.

A recipient shall submit to a reexamination as to his eyesight when required to do so by the county department or the Department of Human Services. He shall also furnish any information required by the county department or the Department of Human Services. (Ga. L. 1937, p. 568, § 15; Ga. L. 1982, p. 3, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" twice in this Code section.

49-4-57. Providing supplementary treatment services.

Supplementary services may be provided by a county department to any applicant or recipient who is in need of treatment either to prevent blindness or to restore his eyesight, whether or not he is blind as defined in subsection (b) of Code Section 49-4-51, if he is otherwise qualified for assistance under this article. The supplementary services may include necessary traveling and other expenses to receive treatment from a hospital or clinic designated by the department. (Ga. L. 1937, p. 568, § 16.)

49-4-58. Assistance is neither assignable nor subject to legal process; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death

occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1937, p. 568, § 12; Ga. L. 1950, p. 287, § 1.)

RESEARCH REFERENCES

ALR. — Voluntary or involuntary bankruptcy proceedings in case of incompetent or infant, 125 ALR 1292.

49-4-59. Recovery of assistance payments from recipient's estate; federal share of amounts recovered.

(a) The total amount of assistance paid under this article shall be allowed as a claim against the estate of a deceased recipient after funeral expenses, not to exceed \$75.00, and the expense of administering the estate have been paid; provided, however, that no claim shall be enforced against any real estate of a recipient while it is occupied by his or her surviving spouse or dependent.

(b) The federal government shall be entitled to a share of any amounts collected under subsection (a) of this Code section from recipients or from their estates, if required as a condition to federal financial participation in assistance under this article, equal to not more than one-half of the amount collected; and this amount shall be specified by the department. The amount due the United States shall be paid promptly to it by the department. (Ga. L. 1937, p. 568, § 18.)

49-4-60. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1937, p. 568, § 19; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Re- sources" in the first sentence of this Code section.

49-4-61. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1937, p. 568, § 22.)

ARTICLE 4**AID TO THE DISABLED****49-4-80. Definitions.**

As used in this article, the term:

(1) "Applicant" means a person who has applied for assistance under this article.

(2) "Assistance" means money payments to, or hospital care in behalf of, needy individuals who are totally and permanently disabled but does not include any such payments to or care in behalf of any such individual who is an inmate of a public institution (except as a patient in a medical institution) or any individual:

(A) Who is a patient in an institution for tuberculosis or mental illness or developmental disability; or

(B) Who has been diagnosed as having tuberculosis or being mentally ill or developmentally disabled and is a patient in a medical institution as a result thereof.

(3) "Recipient" means a person who has received assistance.

(4) "Totally and permanently disabled" means any person not less than 18 nor more than 65 years of age who has a medically demonstrable disability which is permanent and which renders him incapable of performing any gainful occupation within his competence. (Ga. L. 1952, p. 15, § 1; Ga. L. 1957, p. 368, § 6; Ga. L. 2009, p. 453, §§ 3-5, 3-6/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "developmental disability" for "mental retardation" in subparagraph (2)(A), and substituted "developmentally disabled" for "mentally retarded" in subparagraph (2)(B).

JUDICIAL DECISIONS

Cited in *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972); *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Pugh v. Department of Human Resources*, 132 Ga.

App. 60, 207 S.E.2d 542 (1974); *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

RESEARCH REFERENCES

ALR. — Admissibility of opinion evidence as to employability on issue of disability in health and accident insurance and workers' compensation cases, 154 ALR 427; 89 ALR3d 783.

49-4-81. Eligibility for assistance under this article.

(a) Assistance is to be granted under this article to any person who:

(1) Is not less than 18 nor more than 65 years of age;

(2) Is totally and permanently disabled as that term is defined in Code Section 49-4-80;

(3) Does not have sufficient income or other resources to provide a subsistence compatible with decency and health;

(4) Has not made an assignment or transfer of property for the purpose of rendering himself eligible for assistance under this article at any time within two years immediately prior to the filing of application for assistance pursuant to this article;

(5) Has been a bona fide resident of the state for not less than one year; and

(6) Is not receiving old-age assistance, aid to the blind, or aid to dependent children.

(b) No applicant shall be required to subscribe to a pauper's oath in order to be eligible for assistance under this article. (Ga. L. 1952, p. 15, § 2; Ga. L. 1964, p. 665, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was added.

JUDICIAL DECISIONS

Cited in *Bryson v. Burson*, 308 F. Supp. 1170 (N.D. Ga. 1969); *Holloway v. Parham*, 340 F. Supp. 336 (N.D. Ga. 1972); *James v. Harden*, 136 Ga. App. 207, 221 S.E.2d 67 (1975); *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

OPINIONS OF THE ATTORNEY GENERAL

United States Supreme Court decisions control validity of residency statutes. — The validity of the residency statutes concerning eligibility for public assistance would be held invalid by a court on the basis of United States Supreme Court decisions. 1969 Op. Att'y Gen. No. 69-238.

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, §§ 195, 197.

ALR. — Social Security Acts: requisite of employment as affected by family relationship between alleged employer and employee, 8 ALR3d 696.

Necessity and sufficiency of showing that “substantial and gainful activity” is available to disability claimant under Federal Social Security Act, 22 ALR3d 440.

49-4-82. Duties of department under this article.

The department shall:

- (1) Supervise the administration by the county departments of assistance to the needy totally and permanently disabled under this article;
- (2) Make such rules and regulations and take such action as may be necessary or desirable for carrying out this article;
- (3) Prescribe the form of and print and supply to the county department such forms as it may deem necessary and advisable; and
- (4) Publish an annual report and such interim reports as may be necessary. (Ga. L. 1952, p. 15, § 4.)

JUDICIAL DECISIONS

Cited in *Gartrell v. McGahee*, 216 Ga. 125, 114 S.E.2d 871 (1960).

RESEARCH REFERENCES

C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 196.

49-4-83. Duties of county departments under this article.

The county departments shall:

- (1) Administer this article in their respective counties, subject to the rules and regulations prescribed by the board pursuant to this article;
- (2) Report to the department at such times and in such manner and form as the department may from time to time direct; and
- (3) Submit to the county commissioner or board of commissioners or the legally constituted fiscal or financial agent of the county, after approval by the department, a budget containing an estimate and supporting data setting forth the amount of money needed to carry out this article. (Ga. L. 1952, p. 15, § 5.)

49-4-84. Assistance is neither assignable nor subject to legal process or operation of bankruptcy law; payment of assistance check after death of recipient.

(a) Assistance granted under this article shall not be transferable or assignable at law or in equity; and none of the money paid or payable under this article shall be subject to execution, levy, attachment, garnishment, or other legal process or to the operation of any bankruptcy or insolvency law.

(b) Where a recipient dies after authorization of his assistance grant but before negotiation of his assistance check for the month in which his death occurs, endorsement of such check without recourse by the department to the spouse or nearest living relative of the recipient shall be sufficient authorization to the drawee bank to pay such check. (Ga. L. 1952, p. 15, § 9.)

49-4-85. Payment of assistance after recipient moves to another county.

Any recipient who moves to another county in this state shall be entitled, with the approval of the Department of Human Services, to receive assistance in the county to which he has moved; and the county department of the county from which he has moved shall transfer all necessary records relating to the recipient to the county department of the county to which he has moved. The county from which the recipient has moved shall pay the assistance for a period of two months, after which time the county to which he has moved shall pay the assistance, if he remains otherwise eligible. (Ga. L. 1952, p. 15, § 13; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Re-

sources" in the first sentence of this Code section.

49-4-86. Claims to assistance subject to amendments or repeals.

All assistance granted under this article shall be deemed to be granted and to be held subject to any amending or repealing Act that may hereafter be passed; and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by any amending or repealing Act. (Ga. L. 1952, p. 15, § 16.)

ARTICLE 5

AID TO FAMILIES WITH DEPENDENT CHILDREN

49-4-100 through 49-4-119.

Reserved. Repealed by Ga. L. 1997, p. 1021, § 5, effective April 22, 1997.

Editor's notes. — Ga. L. 1997, p. 1021, § 5, effective April 22, 1997, repealed and reserved this article. This article was based on Ga. L. 1937, p. 630, §§ 1, 2, 4, 5, 11, 13, and 14; Ga. L. 1950, p. 307, § 1; Ga. L. 1952, p. 253, § 1; Ga. L. 1957, p. 368, § 5; Ga. L. 1963, p. 291, §§ 1 - 3; Ga. L. 1964, p. 125, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1984, p. 1426, § 1; Ga. L. 1986, p. 410, § 2; Ga. L. 1986, p. 881, § 1; Ga. L. 1988, p. 1720, § 15;

Ga. L. 1992, p. 6, § 49; Ga. L. 1992, p. 2772, § 2; Ga. L. 1992, p. 3044, §§ 1, 2; Ga. L. 1993, p. 1969, §§ 1, 2; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 765, §§ 1, 2; Ga. L. 1995, p. 1155, §§ 2, 2.1.

Code Sections 49-4-118 and 49-4-119, enacted by Ga. L. 1995, p. 1155, §§ 2 and 2.1, respectively, were repealed by Ga. L. 1997, p. 1021, § 5 prior to their effective dates.

ARTICLE 6

MEDICAL ASSISTANCE FOR AGED

49-4-120 through 49-4-128.

Reserved. Repealed by Ga. L. 1999, p. 296, § 16, effective July 1, 1999.

Editor's notes. — Ga. L. 1999, p. 296, § 16, effective July 1, 1999, repealed and reserved this article. The former article, concerning "The Medical Assistance for the Aged Act", consisted of Code Sections 49-4-120 through 49-4-128 and was based on Ga. L. 1961, p. 170, §§ 1 through 6, and 8

through 10; Ga. L. 1982, p. 3, § 49; Ga. L. 1994, p. 97, § 49.

Code Section 49-4-121 was amended by Ga. L. 1999, p. 81, § 49. However, this amendment was not given effect due to the reserving of this article by Ga. L. 1999, p. 296, § 16.

ARTICLE 7

MEDICAL ASSISTANCE GENERALLY

Cross references. — Hospital care for the indigent generally, § 31-8-1 et seq. Determination of responsibility of parties to pay costs of treatment for mental illness, mental retardation, and alcoholism, §§ 37-3-121, 37-4-81, 37-7-121, Ch. 9, T. 37.

Administrative rules and regulations. — Department of Medical Assistance, Official Compilation of the Rules and Regulations of the State of Georgia, Title 350.

JUDICIAL DECISIONS

Authority of Department of Medical Assistance (now Department of Community Health) regarding branch offices of home health services. — Failure of a provider under the Home Health Services Program of the Georgia Medicaid Program to satisfy Department of Medical Assistance (DMA) (now Department of Community Health) regulations governing the geographic loca-

tion of branch facilities authorized the DMA to disallow reimbursement, even if the federal Health Care Financing Administration and the Department of Human Resources had approved the provider's branch organizational structure. *ABC Home Health Servs., Inc. v. Georgia Dep't of Medical Assistance*, 211 Ga. App. 496, 439 S.E.2d 696 (1993).

RESEARCH REFERENCES

ALR. — Limitation on right of chiropractors and osteopathic physicians to partici-

pate in public medical welfare programs, 8 ALR4th 1056.

Validity of state statutes and regulations abortions sought by indigent women, 20
limiting or restricting public funding for ALR4th 1166.

49-4-140. Short title.

The short title for this article shall be the “Georgia Medical Assistance Act of 1977.” (Ga. L. 1977, p. 384, § 2.)

Law reviews. — For article, “Privatization Access and Indigent Care,” see 47 Mercer L.
of Rural Public Hospitals: Implications for Rev. 991 (1996).

JUDICIAL DECISIONS

Cited in Feminist Women’s Health Ctr. v.
Burgess, 282 Ga. 433, 651 S.E.2d 36 (2007).

49-4-141. Definitions.

As used in this article, the term:

(1) “Applicant for medical assistance” means a person who has made application for certification as being eligible, generally, to have medical assistance paid in his or her behalf pursuant to the state plan and whose application has not been acted upon favorably.

(2) “Board” means the Board of Community Health established under Chapter 2 of Title 31.

(3) “Commissioner” means the commissioner of the department.

(4) “Department” means the Department of Community Health established under Chapter 2 of Title 31.

(5) “Medical assistance” means payment to a provider of a part or all of the cost of certain items of medical or remedial care or service rendered by the provider to a recipient of medical assistance, provided such items are rendered and received in accordance with such provisions of Title XIX of the federal Social Security Act of 1935, as amended, regulations promulgated pursuant thereto by the secretary of health and human services, all applicable laws of this state, the state plan, and regulations of the department which are in effect on the date on which the items are rendered.

(6) “Provider of medical assistance” means a person or institution, public or private, which possesses all licenses, permits, certificates, approvals, registrations, charters, and other forms of permission issued by entities other than the department, which forms of permission are required by law either to render care or to receive medical assistance in which federal financial participation is available and which meets the further requirements for participation prescribed by the department and

which is enrolled, in the manner and according to the terms prescribed by the department, to participate in the state plan.

(7) “Recipient of medical assistance” means a person who has been certified eligible, pursuant to the state plan, to have medical assistance paid in his or her behalf.

(8) “State plan” means all documentation submitted by the commissioner in behalf of the department to and for approval by the secretary of health and human services, pursuant to Title XIX of the federal Social Security Act, as amended (Act of July 30, 1965, P.L. 89-97, Stat. 343, as amended).

(9) “Third party” means an individual, institution, corporation, or public or private agency, other than the department, that is legally liable to pay all or any part of the medical costs incurred by a recipient of medical assistance on account of any sickness, injury, disease, or disability to such a recipient. (Ga. L. 1977, p. 384, § 3; Ga. L. 1979, p. 1293, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 1999, p. 296, § 17; Ga. L. 2009, p. 453, § 1-7/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Chapter 2 of Title 31” for “Chapter 5A of Title 31” in paragraphs (2) and (4).

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in paragraphs (5) and (8) of this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

Public agencies as third parties. — Where the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient’s settlement proceeds to recover Medicaid sums that it expended to pay providers for the recipient’s treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that the DCH’s lien was invalid, the trial court properly granted the summary judgment motion of defendant, the Commissioner of the DCH, as, contrary to the recipient’s contentions, the DCH’s lien under O.C.G.A. § 49-4-149(a) was not invalid even

though the DCH was seeking to enforce the lien against another public agency (the board of regents of Georgia’s university system, doing business as a medical college) because § 49-4-149(a) allowed the lien against moneys owed by a third party for its liability leading to the recipient’s injury and, applying the definitions in O.C.G.A. § 49-4-141(4) and (9), third parties included other public agencies. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Cited in *State v. Stuckey Health Care, Inc.*, 189 Ga. App. 126, 375 S.E.2d 235 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortion. — Georgia statutory language that assures payment for items of care “rendered and received in accordance with” the Social Security Act indicates that state funds, like

federal funds, should not be used to pay for any abortions except those in cases where the mother’s life would be threatened if the fetus were carried to term. 1977 Op. Att’y Gen. No. 77-64.

RESEARCH REFERENCES

ALR. — Transsexual surgery as covered operation under state medical assistance program, 2 ALR4th 775.

49-4-142. Department of Community Health established; adoption, administration, and modification of state plan; drug application fees.

(a) The Department of Community Health established under Chapter 2 of Title 31 is authorized to adopt and administer a state plan for medical assistance in accordance with Title XIX of the federal Social Security Act, as amended (Act of July 30, 1965, P.L. 89-97, 79 Stat. 343, as amended), provided such state plan is administered within the appropriations made available to the department. The department is authorized to establish the amount, duration, scope, and terms and conditions of eligibility for and receipt of such medical assistance as it may elect to authorize pursuant to this article. Further, the department is authorized to establish such rules and regulations as may be necessary or desirable in order to execute the state plan and to receive the maximum amount of federal financial participation available in expenditures made pursuant to the state plan; provided, however, the department shall establish reasonable procedures for notice to interested parties and an opportunity to be heard prior to the adoption, amendment, or repeal of any such rule or regulation. The department is authorized to enter into such reciprocal and cooperative arrangements with other states, persons, and institutions, public and private, as it may deem necessary or desirable in order to execute the state plan.

(b) The department shall, not later than June 1, 1986, implement a modification of the state plan for medical assistance or any affected rules or regulations of the department, which modification will allow supplementation by relatives or other persons for a private room or private sitter or both for a recipient of medical assistance in a nursing home. The modification to the plan or to any affected rules and regulations shall be effective unless and until federal authorities rule that such modification is out of compliance with federal regulations. Such modification of the state plan for medical assistance or rules and regulations:

(1) Shall provide that a provider of nursing home services in either a skilled care facility or an intermediate care facility shall be obligated to provide a recipient of medical assistance only semiprivate accommodations which meet the other requirements of appropriate regulations;

(2) Shall provide that at no time can more than 10 percent of a skilled care or intermediate care facility's rooms be used for Medicaid recipients for whom a private room supplementation has been made;

(3) Shall provide that payments made by relatives or other persons to a provider of medical assistance for the specific stated purpose of paying

the additional costs for a private room or private sitter or both for a recipient of medical assistance in a skilled care facility or intermediate care facility shall not be considered as income when determining the amount of patient liability toward vendor payments; provided, however, that the department's entitlement to payments made by legally liable third parties shall not be diminished by this modification of the state plan;

(4) Shall provide that no provider of medical assistance shall discriminate against a recipient of medical assistance who does not have a relative or other person who is willing and able to provide supplementation; but the provision of a private room or private sitter to a recipient when supplementation is provided shall not constitute discrimination against other recipients;

(5) Shall provide that no recipient who is transferred to or admitted to a private room because of a shortage of beds in semiprivate rooms shall be discharged because the recipient does not have a relative or other person who is willing and able to provide supplementation; and

(6) May provide that the rate charged by the provider of medical assistance to the relative or other person providing supplementation for a private room for a recipient shall not exceed the difference between the maximum rate charged by the provider for a private room to or for a private pay patient and the amount which the provider receives or will receive from the department as reimbursement for otherwise providing for the recipient's care in a semiprivate room.

(c) The department is authorized to establish drug application fees which shall be equal to the department's cost of investigating and determining whether a new drug product should be included in the Controlled Medical Assistance Drug List. Such fees shall be adjusted annually and shall be paid by the drug manufacturers at the time of application. (Ga. L. 1977, p. 384, § 4; Ga. L. 1984, p. 1647, § 1; Ga. L. 1985, p. 517, § 1; Ga. L. 1986, p. 486, § 1; Ga. L. 1990, p. 1808, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 1999, p. 296, § 18; Ga. L. 2009, p. 453, §§ 1-7, 1-52/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted "Chapter 2 of Title 31" for "Chapter 5A of Title 31" in the first sentence; and in the introductory language of subsection (b), deleted the former second sentence, which read: "The Department of Human Resources shall likewise modify any affected rules and regulations of the Department of Human Resources."

Administrative rules and regulations. — Administration and procedures for adoption, amendment, and repeal of rules and

for public notice of changes in methods and standards for setting payment rates, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Medical Assistance, Chapter 350-1 et seq.

Indigent Care Trust Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-6.

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

State's rules restricting reimbursement for abortions inconsistent with Social Security Act. — The rules promulgated by Georgia's Department of Medical Assistance (now Department of Community Health) restricting reimbursement to Medicaid enrollees for medically necessary abortions are inconsistent with Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and because the plaintiff classes will suffer irreparable injury for which there is no adequate legal remedy, the defendants, their agents and employees, must be permanently enjoined from refusing to provide Medicaid reimbursement to the members of the plaintiff classes for the provision of all medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Restrictive rules amounting to denial or reduction of required service. — The restrictions on reimbursement for abortions contained in Georgia's rules amount to a denial or reduction of a required service to an otherwise eligible recipient solely because of that eligible recipient's condition, i.e., pregnancy, and furthermore, these restrictions are not based on medical necessity or utilization control procedures nor is any contention made by the defendants that the abortions sought by the plaintiffs were not medically necessary or presented utilization control problems; therefore, under 42 C.F.R. § 440.230(c), the Georgia Department of Medical Assistance (now Department of Community Health) must provide reimbursement for these medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Plan administrator. — In *O.C.G.A.* § 49-4-142(a), the General Assembly has

designated the Georgia Department of Community Health as the agency authorized to adopt and administer the plan for medical assistance under the federal Medicaid program. *Ga. Dep't of Cmty. Health v. Freels*, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Minimum requirements that state's Medicaid plan must meet. — As a participating state, Georgia's Medicaid plan must meet certain minimum requirements as set out in Title XIX of the Social Security Act. The following categories of services must be provided: (1) inpatient hospital services; (2) outpatient hospital services; (3) laboratory and x-ray services; (4)(A) skilled nursing facility services; (B) early and periodic screening and diagnosis for persons under 21 years of age; (C) family planning services and supplies; and (5) physicians' services, (whether furnished in the office, patient's home, a hospital, skilled nursing facility or elsewhere). *Doe v. Busbee*, 471 F. Supp. 1326 (N.D. Ga. 1979).

Effect of renunciation of inheritance on Medicaid benefits. — While a Medicaid claimant was entitled under *O.C.G.A.* § 53-1-20 to renounce an inheritance under the will of the claimant's spouse, this did not insulate that choice from the application of Medicaid's eligibility regulations. Thus, the Georgia Department of Community Health properly denied Medicaid vendor benefits to the claimant. *Ga. Dep't of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

Cited in Georgia Hosp. Ass'n v. Department of Medical Assistance, 528 F. Supp. 1348 (N.D. Ga. 1982); *Brogdon v. National Healthcare Corp.*, 103 F. Supp. 2d 1322 (N.D. Ga. 2000).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortions. — Statutory language which authorizes the Department of Medical Assistance (now Department of Community Health) "to establish such rules and regulations as may be necessary or desirable in order to ... receive the maximum amount of federal financial participation as is available in expenditures made pursuant to the state plan ..." indicates that state funds, like fed-

eral funds, should not be used to pay for any abortions except those in cases where the mother's life would be threatened if the fetus were carried to term. 1977 Op. Att'y Gen. No. 77-64.

Coverage for medically necessary abortions, reporting requirements. — The Georgia Department of Medical Assistance (now Department of Community Health) must provide coverage for medically necessary

abortions and may impose reasonable reporting or documentation requirements for abortions resulting from rape or incest. 1994 Op. Att'y Gen. No. U94-6.

Limitation on nursing home charges for private rooms. — Nursing home providers may not charge more than the difference between their usual private and semiprivate

room rates to individuals who desire to provide private rooms for medical assistance recipients. 1985 Op. Att'y Gen. No. 85-60.

Department of Medical Assistance (now Department of Community Health) may not forbear collection of overpayments made to providers. 1980 Op. Att'y Gen. No. 80-89.

49-4-142.1. Legislative notification of request for waiver.

On and after May 3, 2006, neither the department, the board, nor any other representative of the state shall submit any request to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services for a waiver pursuant to Section 1115 of the federal Social Security Act without legislative notification. This shall apply only to waivers that relate to Medicaid modernization, Medicaid transformation, or a Medicaid reform model that would affect 20,000 or more individuals in the Georgia Medicaid population. The legislative notification required under this Code section shall be by Act of the General Assembly or the adoption of a joint resolution of the General Assembly. (Code 1981, § 49-4-142.1, enacted by Ga. L. 2006, p. 775, § 1/SB 572; Ga. L. 2007, p. 47, § 49/SB 103.)

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, substituted "May 3, 2006" for "May 5, 2006" in the first sentence.

U.S. Code. — Section 1115 of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1315.

49-4-143. Power of Board of Community Health; Board of Medical Assistance abolished.

The Board of Community Health established under Chapter 2 of Title 31 is empowered to establish the general policy to be followed by the department. The Board of Medical Assistance which existed June 30, 1999, is abolished July 1, 1999, and no person shall be appointed to such board on or after July 1, 1999. (Ga. L. 1977, p. 384, § 5; Ga. L. 1999, p. 296, § 19; Ga. L. 2009, p. 453, § 1-7/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Chapter 2 of Title 31" for

"Chapter 5A of Title 31" in the first sentence of this Code section.

JUDICIAL DECISIONS

Cited in Georgia Hosp. Ass'n v. Department of Medical Assistance, 528 F. Supp. 1348 (N.D. Ga. 1982).

49-4-144. Chief administrative officer; powers and duties.

The commissioner of community health established under Chapter 2 of Title 31 shall be the chief administrative officer of the department and, subject to the general policy established by the board, shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the department. (Ga. L. 1977, p. 384, § 6; Ga. L. 1981, p. 855, § 1; Ga. L. 1999, p. 296, § 19; Ga. L. 2009, p. 453, § 1-7/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Chapter 2 of Title 31" for "Chapter 5A of Title 31" in this Code section.

49-4-145. Time limitations on claims for assistance; form of claims.

Claims for medical assistance must be submitted not more than six months after the month in which the service is rendered and shall be in the form prescribed by the commissioner, except that the commissioner may, where he finds that delay in submission of claims was caused by circumstances beyond the control of the provider, extend the period for submission of certain claims for a period not to exceed 12 months after the month in which the service was rendered; provided, however, that such limitations shall not apply to claims timely filed pursuant to Title XVIII of the federal Social Security Act of 1935, as amended, and reimbursements of such claims may be authorized by the department so long as federal financial participation in such reimbursements is available. (Ga. L. 1977, p. 384, § 7; Ga. L. 1981, p. 1887, § 1.)

U.S. Code. — Title XVIII of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1395 et seq.

49-4-146. Time for action on claim.

The Department of Community Health, within three months of receiving a claim submitted on or after July 1, 1978, shall pay or deny the claim. (Ga. L. 1977, p. 384, § 15A; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

Restrictions on reimbursement for abortions as denial or reduction of required service. — The restrictions on reimbursement for abortions contained in Georgia's rules amount to a denial or reduction of a required service to an otherwise eligible recipient solely because of that eligible recipient's condition, i.e., pregnancy, and furthermore, these restrictions are not based on medical necessity or utilization control

procedures nor is any contention made by the defendants that the abortions sought by the plaintiffs were not medically necessary or presented utilization control problems; therefore, under 42 C.F.R. § 440.230(c) the Georgia Department of Medical Assistance (now Department of Community Health) must provide reimbursement for these medically necessary abortions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

49-4-146.1. (For effective date, see note.) Unlawful acts; violations and penalties; recovery of excess amounts; termination and reinstatement of providers; duty of department to identify and investigate violations and notify proper authorities; authorization to obtain income eligibility verification from Department of Revenue.

(a) As used in this Code section, the term:

(1) "Agent" means any person who has been delegated the authority to obligate or act on behalf of a provider.

(2) "Convicted" means that a judgment of conviction has been entered by any federal, state, or other court, regardless of whether an appeal from that judgment is pending.

(3) "Indirect ownership interest" means any ownership interest in an entity that has an ownership interest in the provider entity. The term includes an ownership interest in any entity that has an indirect ownership interest in the provider entity.

(4) "Managing employee" means a general manager, business manager, administrator, director, or other individual who exercises operational or managerial control over, or who directly or indirectly conducts, the day-to-day operation of the institution, organization, or agency.

(5) "Payment" includes a payment or approval for payment, any portion of which is paid by the Georgia Medicaid program, or by a contractor, subcontractor, or agent for the Georgia Medicaid program pursuant to a managed care program operated, funded, or reimbursed by the Georgia Medicaid program.

(6) "Person" means any person, firm, corporation, partnership, or other entity.

(7) "Person with an ownership or control interest" means a person who:

(A) Has ownership interest totaling 5 percent or more in a provider;

(B) Has an indirect ownership interest equal to 5 percent or more in a provider;

(C) Has a combination of direct and indirect ownership interests equal to 5 percent or more in a provider;

(D) Owns an interest of 5 percent or more in any mortgage, deed of trust, note, or other obligation secured by the provider entity if that interest equals at least 5 percent of the value of the property or assets of the provider;

(E) Is an officer or director of a provider that is organized as a corporation; or

(F) Is a partner in a provider entity that is organized as a partnership.

(8) "Provider" means an actual or prospective provider of medical assistance under this chapter. The term "provider" shall also include any managed care organization providing services pursuant to a managed care program operated, funded, or reimbursed by the Georgia Medicaid program.

(b) It shall be unlawful:

(1) For any person or provider to obtain, attempt to obtain, or retain for himself, herself, or any other person any medical assistance or other benefits or payments under this article, or under a managed care program operated, funded, or reimbursed by the Georgia Medicaid program, to which the person or provider is not entitled, or in an amount greater than that to which the person or provider is entitled, when the assistance, benefit, or payment is obtained, attempted to be obtained, or retained, by:

(A) Knowingly and willfully making a false statement or false representation;

(B) Deliberate concealment of any material fact; or

(C) Any fraudulent scheme or device; or

(2) For any person or provider knowingly and willfully to accept medical assistance payments to which he or she is not entitled or in an amount greater than that to which he or she is entitled or knowingly and willfully to falsify any report or document required under this article.

(c) Any person violating paragraph (1) or (2) of subsection (b) of this Code section shall be guilty of a felony and, upon conviction thereof, shall be punished for each offense by a fine of not more than \$10,000.00, or by imprisonment for not less than one year nor more than ten years, or by both such fine and imprisonment. In any prosecution under this Code section, the state has the burden of proving beyond a reasonable doubt that the defendant intentionally committed the acts for which he or she is charged.

(c.1)(1) Any person committing abuse shall be liable for a civil monetary penalty equal to two times the amount of any excess benefit or payment. This penalty shall be collected on the same terms as a penalty imposed pursuant to subsection (d) of this Code section, except as to the amount specified in items (1) and (2) of that subsection, but shall not be imposed cumulatively with a penalty under such subsection.

(2) Abuse is defined as a provider knowingly obtaining or attempting to obtain medical assistance or other benefits or payments under this article to which the provider knows he or she is not entitled when the assistance, benefits, or payments are greater than an amount which would

be paid in accordance with those provisions of the department's policies and procedures manual which are adopted pursuant to public notice, and the assistance, benefits, or payments directly or indirectly result in unnecessary costs to the medical assistance program. Isolated instances of unintentional errors in billing, coding, and costs reports shall not constitute abuse. Miscoding shall not constitute abuse if there is a good faith basis that the codes used were appropriate under the department's policies and procedures manual and there was no deceptive intent on the part of the provider.

(d) In addition to any other penalties provided by law, each person violating subsection (b) of this Code section shall be liable to a civil penalty equal to the greater of (1) three times the amount of any such excess benefit or payment or (2) \$1,000.00 for each excessive claim for assistance, benefit, or payment. Additionally, interest on the penalty shall be paid at the rate of 12 percent per annum from the date of payment of any such excessive amount, or from the date of receipt of any claim for an excessive amount when no payment has been made, until the date of payment of such penalty to the department.

(e)(1) Whenever the commissioner proposes to recover an amount provided for in subsection (d) of this Code section, he shall give 30 days' written notice of his intended actions. The notice shall inform the person in violation of subsection (b) of this Code section of his right to a hearing, the method by which he may obtain a hearing, and that he may be represented by an authorized representative, such as legal counsel, relative, friend, or other spokesman, or that he may represent himself.

(2) All hearings held by virtue of this subsection shall be conducted in the same manner as any other contested case within the department and shall be subject to the rules and regulations regarding hearings within the department. As in all contested cases within the department, the person against whom the commissioner is proceeding under this subsection shall have the right to appeal any adverse administrative decision to the superior court of the county of his residence or to the Superior Court of Fulton County once he exhausts all administrative remedies within the department.

(3) If the person against whom the commissioner is proceeding under this subsection fails to request a hearing or fails to exhaust all administrative remedies within the department, then his case shall be treated as an unappealed administrative decision. In any unappealed administrative decision where the aggrieved party fails to request a hearing or fails to exhaust all administrative remedies, the commissioner shall issue an order to the person against whom the commissioner is proceeding, directing payment of any amount found to be due pursuant to subsection (d) of this Code section within ten days after service of the order. Upon failure to comply with the commissioner's order, the commissioner may

issue a certificate to the clerk of the superior court of the county of residence of the person who is the subject of the order. A copy of such certificate shall be served upon the person against whom the order was entered. Thereupon, the clerk shall immediately enter upon his record of docketed judgments the name of the person so indebted, that the debt is owed to the state, a designation of the statute under which such amount is found to be due, the amount due, and the date of the certification. Such entry shall have the same force and effect as the entry of a docketed judgment in the superior court. Such entry on the docket by the commissioner shall be without prejudice to the right of the aggrieved party to contest such entry by affidavit of illegality or as otherwise provided by law.

(f) The department may refuse to accept a statement of participation, deny a request for reinstatement, refuse to exercise its option to renew a statement of participation, suspend or withhold those payments arising from fraud or willful misrepresentation under the Medicaid program, or terminate the participation of any provider other than a natural person if that provider or any person with an ownership or control interest or any agent or managing employee of such provider has been:

(1) Convicted of violating paragraph (1) or (2) of subsection (b) of this Code section;

(2) Convicted of committing any other criminal offense related to any program administered under Title XVIII, XIX, or XX of the Social Security Act of 1935, as amended; or

(3) Excluded or suspended from participation in the medicare program for fraud or abuse.

In making a decision pursuant to this subsection, the department shall consider the facts and circumstances of the specific case, including but not limited to the nature and severity of the crime or violation and the extent to which it adversely affected medical assistance recipients and the program.

(g) The department shall refuse to accept a statement of participation, deny a request for reinstatement, refuse to exercise its option to renew a statement of participation, or terminate the participation of any provider who is a natural person if that provider or any agent or managing employee of such provider has been convicted of:

(1) Violating subsection (b) of this Code section; or

(2) Committing any other criminal offense related to any program administered under Title XVIII, XIX, or XX of the Social Security Act of 1935, as amended.

(h) The department shall reinstate a provider whose participation in the medical assistance program was terminated pursuant to subsection (f) or

(g) of this Code section if the conviction upon which the termination was based is reversed or vacated or if the decision of the administrative law judge is reversed in accordance with the department's rules and regulations.

(i) It shall be the duty of the department to identify and investigate violations of this article and to turn over to the prosecuting attorney, for prosecution, any information concerning any recipient of medical assistance who violates this article.

(j) (For effective date, see note.) As necessary to enforce the provisions of this article, the department or its duly authorized agents may submit to the state revenue commissioner the names of applicants for medical assistance or other benefits or payments provided under this article, as well as the relevant income threshold specified therein. If the department elects to contract with the state revenue commissioner for such purposes, the state revenue commissioner and his or her agents or employees shall notify the department whether or not each submitted applicant's income exceeds the relevant income threshold provided. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No information shall be provided by the Department of Revenue to the department without an executed cooperative agreement between the two departments. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection is subject to the provisions of Code Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful divulging of confidential tax information. (Ga. L. 1981, p. 962, § 1; Ga. L. 1985, p. 1395, §§ 1, 2; Ga. L. 1994, p. 97, § 49; Ga. L. 1997, p. 679, § 1; Ga. L. 1997, p. 1596, § 1; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 1; Ga. L. 2006, p. 775, § 2/SB 572; Ga. L. 2007, p. 47, § 49/SB 103; Ga. L. 2009, p. 63, § 1/SB 165.)

Delayed effective date. — Subsection (j), as set out above, becomes effective January 1, 2010. Until January 1, 2010, there is no subsection (j).

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (b)(2).

The 2009 amendment, effective January 1, 2010, added subsection (j).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "Title" was substituted for "Titles" in paragraph (f)(2).

U.S. Code. — Titles XVIII, XIX, and XX

of the Social Security Act of 1935, referred to in this Code section, are codified at 42 U.S.C. §§ 1395 et seq., 1396 et seq., 1397 et seq., respectively.

Section 6103 of the Internal Revenue Code, referred to in subsection (j), is codified at 26 U.S.C. § 6103.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 276 (1997). For survey article on criminal law and procedure for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 117 (2003).

JUDICIAL DECISIONS

Venue for crime of report falsification. — Crime of violating the Georgia Medical Assistance Act, O.C.G.A. § 49-4-140 et seq., by falsifying reports claiming reimbursement for prescriptions consisted of the act of “falsifying,” rather than the act of “submitting” or “sending,” and venue was proper in the county in which the reports were falsified, not in the county to which the reports were sent. *State v. Barber*, 193 Ga. App. 397, 388 S.E.2d 350 (1989).

Venue for Medicaid fraud. — In a Medicaid fraud case committed by a fraudulent scheme or device under O.C.G.A. § 49-4-146.1(b)(1)(C) of the Georgia Medical Assistance Act, O.C.G.A. § 49-4-140 et seq., pursuant to Ga. Const. 1983, Art. VI, Sec. II, Para. VI and O.C.G.A. § 17-2-2(a), venue is proper in any county where an act was committed in furtherance of the fraudulent transaction; defendants committed acts in furtherance of the fraud in counties in which the defendants were tried and convicted and, thus, venue in those counties was proper and the appellate court improperly reversed defendants’ convictions. *State v. Kell*, 276 Ga. 423, 577 S.E.2d 551 (2003).

Venue was proper in county in which defendant was tried for Medicaid fraud be-

cause it was the county in which the fraudulent scheme was hatched, acts in furtherance thereof were performed, and payment was received. *Kell v. State*, 262 Ga. App. 489, 585 S.E.2d 915 (2003).

Aiding and abetting commission of crime. — Even assuming defendant could not be considered a “provider,” the wide range of activities performed, when combined with defendant’s supervisory role in the medical office, made defendant a party to the crime of Medicaid fraud. *Bullard v. State*, 242 Ga. App. 843, 530 S.E.2d 265 (2000).

State’s authority to prosecute — Under O.C.G.A. § 49-4-146.1(c), the state has the authority to prosecute persons who violate O.C.G.A. § 49-4-146.1(b)(2), prohibiting a Medicaid provider’s acceptance of payment to which the provider is not entitled, or falsifying a required report. *Bixby v. State*, 254 Ga. App. 212, 561 S.E.2d 870 (2002).

Fine for Medicaid fraud deemed proper. — Defendant was properly fined \$ 50,000 as a condition of defendant’s 10 years’ probation for Medicaid fraud because, although the maximum statutory fine for the crime was \$ 10,000, the trial court could impose a fine up to \$ 100,000 as a probation condition pursuant to O.C.G.A. § 17-10-8. *Kell v. State*, 262 Ga. App. 489, 585 S.E.2d 915 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 37 Am. Jur. 2d, Fraud and Deceit, § 1 et seq.

C.J.S. — 37 C.J.S., Fraud, § 1 et seq.

ALR. — Criminal prosecution or disciplinary action against medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare program for providing medical service, 50 ALR3d 549; 70 ALR4th 132.

Imposition of civil penalties, under state statute, upon medical practitioner for fraud in connection with claims under Medicaid, Medicare, or similar welfare programs for providing medical services, 32 ALR4th 671.

Filing of false insurance claims for medical services as ground for disciplinary action against dentist, physician, or other medical practitioner, 70 ALR4th 132.

49-4-146.2. Requirements for voluntary termination of provider agreements by nursing facilities; adjustment of medical assistance rate; decertification.

(a) As used in this Code section, the term:

(1) “Assist” means that the provider will, at a minimum, do the following:

(A) Provide the resident, the resident's legal guardian, or the resident's representative with the names, addresses, phone numbers, and contact persons at other facilities appropriate to the needs of the resident;

(B) Contact the identified facilities initially in the resident's behalf;

(C) Develop a transfer plan for each resident that addresses the individual needs of the resident during the transfer;

(D) Make arrangements for the safe and orderly transfer of the resident; and

(E) Provide the resident, guardian, or representative with counseling regarding available community resources and informing the appropriate state or social service organizations, including, but not limited to, the community or state long-term care ombudsman and assisting in arranging for the transfer or discharge.

(2) "Decertification" means and refers to termination of a facility's limited provider agreement, at such time as no Medicaid eligible residents reside in the facility.

(3) "Limited provider agreement" means and refers to an agreement between a facility and the department whereby the facility agrees to provide nursing facility services to Medicaid eligible residents and the department agrees to pay medical assistance for services rendered to Medicaid eligible residents during the period of time from termination notice to decertification.

(4) "Medicaid eligible residents" means and refers to persons:

(A) Residing in the facility as of the effective date of termination; and

(B) Who are certified as recipients of medical assistance prior to the effective date of termination.

(5) "Termination" or "terminate" refers to voluntary termination by a nursing facility of its current provider agreement with the department. Upon termination, the facility must enter into a limited provider agreement.

(b) A nursing facility may voluntarily terminate upon 60 days' written notice to the department. Such notice shall include:

(1) The reason or reasons for termination of its current provider agreement;

(2) The names and Medicaid identification numbers of all Medicaid eligible residents;

(3) The names of residents with applications pending for Medicaid eligibility and the names of any representatives authorized to act for such residents in accordance with paragraph (4) of Code Section 31-8-102;

(4) Copies of notices which the facility intends to provide to residents and applicants pursuant to subsection (d) of this Code section; and

(5) Any other information reasonably deemed by the department to be necessary to process the termination.

(c) Any facility which voluntarily terminates its participation must do so in such a manner as to minimize the harm to current residents and applicants. In meeting this requirement, the facility shall:

(1) Enter into a limited provider agreement;

(2) Meet the requirements for nursing facilities enrolled as providers of medical assistance, except as otherwise set forth in the limited provider agreement and this Code section;

(3) Assist residents who desire to leave the facility in finding alternative placement; and

(4) With regard to residents who are not Medicaid eligible residents at the time of termination, but who subsequently become Medicaid eligible residents, comply with the applicable provisions of Code Section 31-8-116 (with the exception of the second sentence of paragraph (3) of subsection (a) of said Code section).

(d) The terminating facility must meet the following notice requirements. All notices required under this subsection must be approved by the department:

(1) The facility shall notify each Medicaid eligible resident that:

(A) The facility has elected to terminate its current provider agreement;

(B) The resident may continue to reside in the facility as long as he or she continues to be a recipient of medical assistance; and

(C) Should the resident wish to transfer to another facility, the terminating facility will provide orientation and preparation for transfer and assist the resident and the department in locating alternative placement;

(2) The facility shall notify all other residents:

(A) That the facility has elected to terminate its current provider agreement;

(B) That the resident will not be entitled to have medical assistance paid on his or her behalf if he or she becomes a Medicaid eligible resident on or after the effective date of termination; and

(C) Of his or her rights pursuant to Code Section 31-8-116; and

(3) The facility shall notify all applicants on the facility's waiting list that:

(A) The facility has elected to terminate its current provider agreement;

(B) No resident admitted to the facility after the effective date of termination shall be entitled to have his or her care at such facility covered by medical assistance;

(C) The legal rights and protections that apply to all residents (regardless of source of payment) in nursing facilities enrolled as providers of medical assistance will not be available on or after the effective date of decertification;

(D) The legal rights and protections under the Georgia Bill of Rights for Residents of Long-term Care Facilities and under other state laws will continue to be available after the effective date of decertification; and

(E) If such applicant desires to apply to other facilities, the terminating facility will assist the applicant in finding alternative placement.

(e) The terminating facility shall receive medical assistance at the per diem rate in effect at the time the facility notified the department of its intention to terminate until such time as rate adjustments are made under the state plan. At that time, the facility's medical assistance rate shall be adjusted to the state-wide average medical assistance rate paid to the class of facilities under the state plan to which the terminating facility belongs.

(f) The terminating facility shall be decertified and its limited provider agreement terminated at such time as no Medicaid eligible residents reside in the facility.

(g) A facility shall file a cost report with the department for the fiscal period ending with the effective date of termination in the manner prescribed by the department. (Code 1981, § 49-4-146.2, enacted by Ga. L. 1992, p. 1048, § 1.)

Code Commission notes. — Pursuant to was substituted for "Long-Term" in subparagraph Code Section 28-9-5, in 1992, "Long-term" graph (d)(3)(D).

49-4-146.3. Forfeiture of property and proceeds obtained through Medicaid fraud; fraud forfeiture proceedings; seizure of property subject to forfeiture; lien; inventory; court orders.

(a) As used in this Code section, the term:

(1) "Costs" means, but is not limited to:

(A) All expenses associated with the seizure, towing, storage, maintenance, custody, preservation, operation, or sale of the property; and

(B) Satisfaction of any security interest or lien not subject to forfeiture under this Code section.

(2) “Court costs” means, but is not limited to:

(A) All court costs, including the costs of advertisement, transcripts, and court reporter fees; and

(B) Payment of receivers, conservators, appraisers, accountants, or trustees appointed by the court pursuant to this Code section.

(3) “Interest holder” means a secured party within the meaning of Code Section 11-9-102 or the beneficiary of a perfected encumbrance pertaining to an interest in property.

(4) “Medicaid fraud” means:

(A) A violation of Code Section 49-4-146.1; or

(B) A violation relating to the obtaining of medical assistance benefits or payments under this article of any provision of:

(i) Chapter 8 of Title 16, relating to offenses involving theft;

(ii) Code Section 16-10-20, relating to false statements and writings, concealment of facts, and fraudulent documents in matters within jurisdiction of state or political subdivisions; or

(iii) Code Section 16-10-21, relating to conspiracy to defraud the state or its political subdivisions.

(5) “Owner” means a person, other than an interest holder, who has an interest in property and is in compliance with any statute requiring its recordation or reflection in public records in order to perfect the interest against a bona fide purchaser for value.

(6) “Proceeds” means property derived from or realized through, directly or indirectly, Medicaid fraud and includes property of any kind without reduction for expenses incurred for acquisition, maintenance, or any other purpose.

(7) “Property” means anything of value and includes any interest in anything of value, including real property and any fixtures thereon, and tangible and intangible personal property, including but not limited to currency, instruments, securities, or any kind of privilege, interest, claim, or right.

(8) “Prosecutor” means a district attorney or his or her designee or the Attorney General or his or her designee.

(b) All property and proceeds obtained by a person or entity through or as a result of Medicaid fraud in the provision of services or equipment under this article are subject to forfeiture to the state by a Medicaid fraud forfeiture action brought by the state in accordance with this Code section. This Code section shall not apply to cases involving alleged fraud by Medicaid recipients in obtaining medical assistance benefits.

(c) A Medicaid fraud forfeiture proceeding shall be initiated by a complaint filed in the name of the State of Georgia and may be brought in the case of:

(1) An in rem action, by the prosecutor in the county in which the property is located or seized; or

(2) An in personam action, by the prosecutor in the county in which the defendant resides.

(d)(1) An action pursuant to this Code section may be commenced before or after the seizure of property.

(2) Any Medicaid fraud forfeiture action filed under this Code section shall be limited to a civil action.

(e) A property interest shall not be subject to forfeiture under this Code section if the owner of such interest or interest holder establishes that the owner or interest holder:

(1) Is not legally accountable for the conduct giving rise to its forfeiture, did not consent to it, and did not know and there is no reason why he or she should have known of the conduct or that it was likely to occur;

(2) Had not acquired and did not stand to acquire substantial proceeds from the conduct giving rise to its forfeiture other than as an interest holder in an arm's length commercial transaction;

(3) With respect to conveyances for transportation only, did not hold the property jointly, in common, or in community with a person whose conduct gave rise to its forfeiture;

(4) Does not hold the property for the benefit of or as nominee for any person whose conduct gave rise to its forfeiture, and, if the owner or interest holder acquired the interest through any such person, the owner or interest holder acquired it as a bona fide purchaser for value without knowingly taking part in an illegal transaction; and

(5) Acquired the interest:

(A) Before the completion of the conduct giving rise to its forfeiture, and the person whose conduct gave rise to its forfeiture did not have the authority to convey the interest to a bona fide purchaser for value at the time of the conduct; or

(B) After the completion of the conduct giving rise to its forfeiture:

(i) As a bona fide purchaser for value without knowingly taking part in an illegal transaction;

(ii) Before the filing of a lien on it and before the effective date of a notice of pending forfeiture relating to it and without notice of its seizure for forfeiture under this article; and

(iii) At the time the interest was acquired, was reasonably without cause to believe that the property was subject to forfeiture or likely to become subject to forfeiture under this article.

Upon the request of the owner or interest holder, for good cause shown, the court shall hold an expedited hearing to determine whether the property is subject to forfeiture under this Code section.

(f) A rented or leased vehicle shall not be subject to forfeiture unless it is established in forfeiture proceedings that the owner of the rented or leased vehicle is legally accountable for the conduct which would otherwise subject the vehicle to forfeiture, consented to the conduct, or knew or reasonably should have known of the conduct or that it was likely to occur. Upon learning of the address or phone number of the company which owns any rented or leased vehicle which is present at the scene of an arrest or other action taken pursuant to this Code section, the duly authorized authorities shall immediately contact the company to inform it that the vehicle is available for the company to take possession.

(g)(1) Property which is subject to forfeiture under this Code section may be seized by any law enforcement officer of this state or of any political subdivision thereof who has power to make arrests or execute process or a search warrant issued by any superior court having jurisdiction over the property. A search warrant authorizing seizure of property which is subject to forfeiture pursuant to this Code section may be issued at an ex parte hearing before a superior court judge of a county where the forfeiture action may be brought demonstrating that probable cause exists for its forfeiture or that the property has been the subject of a previous final judgment of forfeiture in the courts of this state, any other state, or the United States. The court may order that the property be seized on such terms and conditions as are reasonable. In entering any such seizure order, the court shall determine that appropriate conditions are included to ensure the physical safety and well-being of any recipients or patients who may be affected by such warrant and that sufficient steps will be taken to ensure that patient medical records are kept confidential. The property owner or interest holder, within ten days of the seizure of property taken pursuant to a search warrant, may make a written demand to the court with notice to the prosecutor for a hearing to determine if probable cause still exists for the seized property to be subject to forfeiture pursuant to this Code section. Said hearing shall be held within 20 days of said demand unless continued by the court for good cause.

(2) At the ex parte hearing for the issuance of a search warrant authorizing the seizure of property under paragraph (1) of this subsection, a reasonable estimate of the approximate fair market value of the property sought to be seized shall be presented to the court. Based upon such evidence, the court shall establish a bond amount for the release of any property ordered seized, not to exceed double the fair market value of that property. The property owner or interest holder may file in the clerk's office of the court where the forfeiture action is brought, a bond with good security, conditioned for the payment of the bond amount established by the court. The bond shall be subject to approval by the clerk of the court. Upon receipt of a bond deemed acceptable by the clerk, the court which ordered the seizure of the property shall issue an order to the persons having custody of the seized property to release such property to the property owner or interest holder filing such bond, unless the property is being held as evidence. If the seized property so released is ordered to be forfeited, the state shall be entitled to entry of judgment upon such bond against the principal and sureties therein, as judgment may be entered against securities upon appeal. If the property seized is released pursuant to this paragraph and is later otherwise required to be released under any other provision of this Code section, the principal and sureties upon any bond given for the release of such property under this paragraph shall also be released from their obligations under that bond.

(h)(1) When property is seized pursuant to this article, the sheriff or law enforcement officer seizing the same shall report the fact of seizure, in writing, within 20 days thereof to the prosecutor of the judicial circuit having jurisdiction in the county where the seizure was made.

(2) Within 30 days from the date of seizure, a complaint for forfeiture shall be initiated as provided for in subsection (n), (o), or (p) of this Code section.

(3) If the state fails to initiate forfeiture proceedings against property seized for forfeiture by notice of pending forfeiture within the time limits specified in paragraphs (1) and (2) of this subsection, the property must be released on the request of an owner or interest holder, pending further proceedings pursuant to this Code section, unless the property is being held as evidence.

(i)(1) Seizure of property by a law enforcement officer constitutes notice of such seizure to any person who was present at the time of seizure who may assert an interest in the property.

(2) When property is seized pursuant to this article, the prosecutor or the sheriff or law enforcement officer seizing the same shall give notice of the seizure to any owner or interest holder who is not present at the time of seizure by personal service, publication, or the mailing of written notice:

(A) If the owner's or interest holder's name and current address are known, by either personal service or mailing a copy of the notice by certified mail or statutory overnight delivery to that address;

(B) If the owner's or interest holder's name and address are required by law to be on record with a government agency to perfect an interest in the property but the owner's or interest holder's current address is not known, by mailing a copy of the notice by certified mail or statutory overnight delivery, return receipt requested, to any address on the record; or

(C) If the owner's or interest holder's address is not known and is not on record as provided in subparagraph (B) of this paragraph or the owner's or interest holder's interest is not known, by publication in two consecutive issues of a newspaper of general circulation in the county in which the seizure occurs.

(3) Notice of seizure must include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture, and the violation of law alleged.

(j) A prosecutor may file, without a filing fee, a lien for forfeiture of property upon the initiation of any civil proceeding under this article or upon seizure for forfeiture. The filing constitutes notice to any person claiming an interest in the property owned by the named person. The filing shall include the following:

(1) The lien notice must set forth:

(A) The name of the person and, in the discretion of the state, any alias and any corporations, partnerships, trusts, or other entities, including nominees, that are either owned entirely or in part or controlled by the person; and

(B) The description of the property, the civil proceeding that has been brought under this article, the amount claimed by the state, the name of the court where the proceeding or action has been brought, and the case number of the proceeding or action if known at the time of filing;

(2) A lien under this subsection applies to the described property and to one named person and to any aliases, fictitious names, or other names, including names of corporations, partnerships, trusts, or other entities, that are either owned entirely or in part or controlled by the named person and any interest in real property owned or controlled by the named person. A separate lien for forfeiture of property must be filed for any other person;

(3) The lien creates, upon filing, a lien in favor of the state as it relates to the seized property or to the named person or related entities with

respect to said property. The lien secures the amount of potential liability for civil judgment and, if applicable, the fair market value of seized property relating to all proceedings under this article enforcing the lien. The forfeiture lien referred to in this subsection must be filed in accordance with the provisions of the laws in this state pertaining to the type of property that is subject to the lien. The state may amend or release, in whole or in part, a lien filed under this subsection at any time by filing, without a filing fee, an amended lien in accordance with this subsection which identifies the lien amended. The state, as soon as practical after filing a lien, shall furnish to any person named in the lien a notice of the filing of the lien;

(4) Upon entry of judgment in favor of the state, the state may proceed to execute on the lien as in the case of any other judgment;

(5) A trustee, constructive or otherwise, who has notice that a lien for forfeiture of property, a notice of pending forfeiture, or a civil forfeiture proceeding has been filed against the property or against any person or entity for whom the person holds title or appears as the owner of record shall furnish, within ten days, to the prosecutor or the prosecutor's designee the following information:

(A) The name and address of the person or entity for whom the property is held;

(B) The names and addresses of all beneficiaries for whose benefit legal title to the seized property, or property of the named person or related entity, is held; and

(C) A copy of the applicable trust agreement or other instrument, if any, under which the trustee or other person holds legal title or appears as the owner of record of the property; and

(6) A trustee, constructive or otherwise, who fails to comply with this subsection shall be guilty of a misdemeanor.

(k) Property taken or detained under this Code section is not subject to replevin, conveyance, sequestration, or attachment. The seizing law enforcement agency or the prosecutor may authorize the release of the property if the forfeiture or retention is unnecessary or may transfer the action to another agency or prosecutor by discontinuing forfeiture proceedings in favor of forfeiture proceedings initiated by the other law enforcement agency or prosecutor. An action under this Code section may be consolidated with any other action or proceeding under this article relating to the same property on motion by an interest holder and must be so consolidated on motion by the prosecutor in either proceeding or action. The property is deemed to be in the custody of the State of Georgia subject only to the orders and decrees of the superior court having jurisdiction over the forfeiture proceedings.

(l)(1) If property is seized under this article, the prosecutor may:

(A) Remove the property to a place designated by the superior court having jurisdiction over the forfeiture proceeding;

(B) Place the property under constructive seizure by posting notice of pending forfeiture, by giving notice of pending forfeiture to its owners and interest holders, or by filing notice of seizure in any appropriate public record relating to the property;

(C) Remove the property to a storage area, within the jurisdiction of the court, for safekeeping or, if the property is a negotiable instrument or money and is not needed for evidentiary purposes, the prosecutor may authorize its being deposited in an interest-bearing account in a financial institution in this state. Any accrued interest shall follow the principal in any judgment with respect thereto;

(D) Provide for another governmental agency, a receiver appointed by the court pursuant to Chapter 8 of Title 9, an owner, or an interest holder to take custody of the property and remove it to an appropriate location within the county where the property was seized; or

(E) Require the sheriff or chief of police of the political subdivision where the property was seized to take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) If any property which has been attached or seized pursuant to this Code section is perishable or is liable to perish, waste, or be greatly reduced in value by keeping or if the expense of keeping the same is excessive or disproportionate to the value thereof, the court, upon motion of the state, a claimant, or the custodian, may order the property or any portion thereof to be sold upon such terms and conditions as may be prescribed by the court; and the proceeds shall be paid into the registry of the court pending final disposition of the action.

(m) As soon as possible, but not more than 30 days after the seizure of property, the seizing law enforcement agency shall conduct an inventory and estimate the value of the property seized. All reasonable steps shall be taken so as not to interfere with or disrupt the provision of medical care by the provider when such inventory is conducted. Such inventory shall be conducted in a manner which assures the confidentiality of patient medical records.

(n) If the estimated value of personal property seized is \$25,000.00 or less, the prosecutor may elect to proceed under the provisions of this subsection in the following manner:

(1) Notice of the seizure of such property shall be posted in a prominent location in the courthouse of the county in which the

property was seized. Such notice shall include a description of the property, the date and place of seizure, the conduct giving rise to forfeiture, a statement that the owner of such property has 30 days within which a claim must be filed, and the violation of law alleged;

(2) A copy of the notice, which shall include a statement that the owner of such property has 30 days within which a claim must be filed, shall be served upon an owner, interest holder, or person in possession of the property at the time of seizure as provided in subsection (i) of this Code section and shall be published for at least three successive weeks in a newspaper of general circulation in the county where the seizure was made;

(3) The owner or interest holder may file a claim within 30 days after the second publication of the notice of forfeiture by sending the claim to the seizing law enforcement agency and to the prosecutor by certified mail or statutory overnight delivery, return receipt requested;

(4) The claim must be signed by the owner or interest holder under penalty of perjury and must substantially set forth:

(A) The caption of the proceedings as set forth on the notice of pending forfeiture and the name of the claimant;

(B) The address at which the claimant will accept mail;

(C) The nature and extent of the claimant's interest in the property;

(D) The date, identity of the transferor, and circumstances of the claimant's acquisition of the interest in the property;

(E) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture; and

(F) The precise relief sought;

(5) If a claim is filed, the prosecutor shall file a complaint for forfeiture as provided in subsection (o) or (p) of this Code section within 30 days of the actual receipt of the claim. A person who files a claim shall be joined as a party; and

(6) If no claim is filed within 30 days after the second publication of the notice of forfeiture, all right, title, and interest in the property are forfeited to the state and the prosecutor shall dispose of the property as provided in subsection (u) of this Code section.

(o) In rem proceedings.

(1) In actions in rem, the property which is the subject of the action shall be named as the defendant. The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a manner required by the laws of this state. Such complaint shall describe the

property with reasonable particularity; state that it is located within the county or will be located within the county during the pendency of the action; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) A copy of the complaint and summons shall be served on any person known to be an owner or interest holder and any person who is in possession of the property.

(A) Service of the complaint and summons shall be as provided in subsections (a), (b), (c), and (e) of Code Section 9-11-4.

(B) If real property is the subject of the action or the owner or interest holder is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceeding shall be published once a week for two successive weeks in the newspaper in which the sheriff's advertisements are published. Such publication shall be deemed notice to any and all persons having an interest in or right affected by such proceeding and from any sale of the property resulting therefrom, but shall not constitute notice to an interest holder unless that person is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself to avoid service.

(C) If tangible property which has not been seized is the subject of the action, the court may order the sheriff or another law enforcement officer to take possession of the property. If the character or situation of the property is such that the taking of actual possession is impracticable, the sheriff shall execute process by affixing a copy of the complaint and summons to the property in a conspicuous place and by leaving another copy of the complaint and summons with the person having possession or such person's agent. In cases involving a vessel or aircraft, the sheriff or other law enforcement officer is authorized to make a written request with the appropriate governmental agency not to permit the departure of such vessel or aircraft until notified by the sheriff or the sheriff's deputy that the vessel or aircraft has been released.

(3) An owner of or interest holder in the property may file an answer asserting a claim against the property in the action in rem. Any such answer shall be filed within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, an owner or interest holder shall file an answer within 30 days of the date of final publication. An answer must be verified by the owner or interest holder under penalty of perjury. In addition to

complying with the general rules applicable to an answer in civil actions, the answer must substantially set forth:

- (A) The caption of the proceedings as set forth in the complaint and the name of the claimant;
- (B) The address at which the claimant will accept mail;
- (C) The nature and extent of the claimant's interest in the property;
- (D) The date, identity of transferor, and circumstances of the claimant's acquisition of the interest in the property;
- (E) The specific provision of this Code section relied on in asserting that the property is not subject to forfeiture; and
- (F) The precise relief sought.

(4) If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section.

(5) If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court with a jury unless waived by the claimant.

(6) An action in rem may be brought by the state in addition to or in lieu of any other in rem or in personam action brought pursuant to this article.

(p) In personam proceedings.

(1) The complaint shall be verified on oath or affirmation by a duly authorized agent of the state in a manner required by the laws of this state. It shall describe with reasonable particularity the property which is sought to be forfeited; state its present custodian; state the name of the owner or interest holder, if known; allege the essential elements of the violation which is claimed to exist; state the place of seizure, if the property was seized; and conclude with a prayer of due process to enforce the forfeiture.

(2) Service of the complaint and summons shall be as follows:

(A) Except as otherwise provided in this subsection, service of the complaint and summons shall be as provided by subsections (a), (b), (c), and (d) of Code Section 9-11-4; and

(B) If the defendant is unknown or resides out of the state or departs the state or cannot after due diligence be found within the state or conceals himself or herself so as to avoid service, notice of the proceedings shall be published once a week for two successive weeks in the newspaper in which the sheriff's advertisements are published.

Such publication shall be deemed sufficient notice to any such defendant.

(3) A defendant shall file a verified answer within 30 days after the service of the summons and complaint. Where service is made by publication and personal service has not been made, a defendant shall file such answer within 30 days of the date of final publication. In addition to complying with the general rules applicable to an answer in civil actions, the answer must contain all of the elements set forth in paragraph (3) of subsection (o) of this Code section.

(4) Any interest holder or person in possession of the property may join any action brought pursuant to this subsection as provided by Chapter 11 of Title 9, known as the "Georgia Civil Practice Act."

(5) If at the expiration of the period set forth in paragraph (3) of this subsection no answer has been filed, the court shall order the disposition of the seized property as provided for in this Code section.

(6) If an answer is filed, a hearing must be held within 60 days after service of the complaint unless continued for good cause and must be held by the court with a jury unless waived by the claimant.

(7) On a determination of liability of a person for conduct giving rise to forfeiture under this Code section, the court must enter a judgment of forfeiture of the property described in the complaint and must also authorize the prosecutor or the prosecutor's agent or any law enforcement officer or peace officer to seize all property ordered to be forfeited which was not previously seized or was not then under seizure. Following the entry of an order declaring the property forfeited, the court, on application of the state, may enter any appropriate order to protect the interest of the state in the property ordered to be forfeited.

(q) In conjunction with any civil action brought pursuant to this article:

(1) The court, on application of the prosecutor, may enter any restraining order or injunction; require the execution of satisfactory performance bonds; appoint receivers, conservators, appraisers, accountants, or trustees; or take any action to seize, secure, maintain, or preserve the availability of property subject to forfeiture under this article, including issuing a warrant for its seizure and writ of attachment, whether before or after the filing of a complaint for forfeiture;

(2) A temporary restraining order under this Code section may be entered on application of the prosecutor, without notice or an opportunity for a hearing, if the prosecutor demonstrates that:

(A) There is probable cause to believe that the property with respect to which the order is sought, in the event of final judgment or conviction, would be subject to forfeiture under this article; and

(B) Provision of notice would jeopardize the availability of the property for forfeiture;

(3) Notice of the entry of a restraining order and an opportunity for a hearing must be afforded to persons known to have an interest in the property. The hearing must be held at the earliest possible date consistent with the date set in subsection (b) of Code Section 9-11-65 and is limited to the issues of whether:

(A) There is a probability that the state will prevail on the issue of forfeiture and that failure to enter the order will result in the property's being destroyed, conveyed, encumbered, removed from the jurisdiction of the court, concealed, or otherwise made unavailable for forfeiture; and

(B) The need to preserve the availability of property through the entry of the requested order outweighs the hardship on any owner or interest holder against whom the order is to be entered;

(4) If property is seized for forfeiture or a forfeiture lien is filed without a previous judicial determination of probable cause or order of forfeiture or a hearing under paragraph (2) of this subsection, the court, on an application filed by an owner of or interest holder in the property within 30 days after notice of its seizure or lien or actual knowledge of such seizure or lien, whichever is earlier, and complying with the requirements for an answer to an in rem complaint, and after five days' notice to the prosecutor of the judicial circuit where the property was seized or, in the case of a forfeiture lien, to the prosecutor filing such lien, may issue an order to show cause to the seizing law enforcement agency for a hearing on the sole issue of whether probable cause for forfeiture of the property then exists. The hearing must be held within 30 days unless continued for good cause on motion of either party. If the court finds that there is no probable cause for forfeiture of the property, the property must be released pending the outcome of a judicial proceeding which may be filed pursuant to this Code section; and

(5) The court may order property that has been seized for forfeiture to be sold to satisfy a specified interest of any interest holder, on motion of any party, and after notice and a hearing, on the conditions that:

(A) The interest holder has filed a proper claim and:

(i) Is authorized to do business in this state and is under the jurisdiction of a governmental agency of this state or of the United States which regulates financial institutions, securities, insurance, or real estate; or

(ii) Has an interest that the prosecutor has stipulated is exempt from forfeiture;

(B) The interest holder must dispose of the property by commercially reasonable public sale and apply the proceeds first to its interest and then to its reasonable expenses incurred in connection with the sale or disposal; and

(C) The balance of the proceeds, if any, must be returned to the actual or constructive custody of the court, in an interest-bearing account, subject to further proceedings under this Code section.

(r) An acquittal or a dismissal or a conviction in any criminal proceeding, either by a verdict or a plea of guilty or nolo contendere, shall be admissible in evidence in any proceeding pursuant to this Code section.

(s) In hearings and determinations pursuant to this Code section:

(1) The court may receive and consider, in making any determination of probable cause or reasonable cause, all evidence admissible in determining probable cause at a preliminary hearing or by a magistrate pursuant to Article 1 of Chapter 5 of Title 17, together with inferences therefrom; and

(2) The fact that the state has established probable cause to believe that a person has engaged in conduct giving rise to forfeiture or that the property was acquired by a person during a period of the conduct giving rise to forfeiture or within a reasonable time thereafter shall not give rise to any presumption, rebuttable or otherwise, that the property is subject to forfeiture. The state shall, at all times, have the burden to prove, by a preponderance of the evidence, that the property is subject to forfeiture under this Code section.

(t)(1) All property declared to be forfeited under this Code section vests in this state at the time of commission of the conduct giving rise to forfeiture together with the proceeds of the property after that time. Any property or proceeds transferred later to any person remain subject to forfeiture and thereafter must be ordered to be forfeited unless the transferee claims and establishes in a hearing under this Code section that the transferee is a bona fide purchaser for value and the transferee's interest is exempt under subsection (e) of this Code section.

(2) On entry of judgment for a person claiming an interest in the property that is subject to proceedings to forfeit property under this Code section, the court shall order that the property or interest in property be released or delivered promptly to that person free of liens and encumbrances, as provided under this article.

(3) The court is authorized to order a claimant who files a frivolous claim to pay the reasonable costs relating to the disproving of the claim which were incurred by the state, including costs for investigation, prosecution, and attorney's fees.

(u)(1) The court may, after judgment of forfeiture, make any of the following orders for disposition of the property:

(A) Judicial sale of the property;

(B) Retention of the property by any party having a property interest therein, as such interest is described in subsection (e) of this Code section, upon payment or approval of a plan for payment into court of the value of any forfeited interest in the property. The plan may include, in the case of a party having such a property interest who holds a lien on or security interest in the property, the sale of the property by any such party under such terms and conditions as may be prescribed by the court and the payment into court of any proceeds from such sale over and above the amount necessary to satisfy the lien or security interest; or

(C) Destruction of any contraband, the possession of which is illegal.

(2) The proceeds from any judicial sale or payments from a party having a property interest as described in paragraph (1) of this subsection shall be delivered to the Department of Community Health. The proceeds shall then be disbursed in accordance with the requirements of federal law.

(v) An acquittal or dismissal in a criminal proceeding does not preclude civil proceedings under this article, provided that no property shall be forfeited after an acquittal or dismissal in a criminal proceeding unless the state obtains a civil judgment for forfeiture under this article.

(w) For good cause shown, the court may stay civil forfeiture proceedings during the criminal trial resulting from a related indictment or information alleging a violation of this article.

(x)(1) The court shall order the forfeiture of any property of a claimant or defendant up to the value of property found by the court to be subject to forfeiture under the provisions of this Code section if any of the forfeited property:

(A) Cannot be located;

(B) Has been transferred or conveyed to, sold to, or deposited with a third party;

(C) Is beyond the jurisdiction of the court;

(D) Has been substantially diminished in value while not in the actual physical custody of the receiver or governmental agency directed to maintain custody of the property; or

(E) Has been commingled with other property that cannot be divided without difficulty.

(2) In addition to any other remedy provided for by law, a prosecutor on behalf of the state may institute an action in any court of this state or of the United States or any of the several states against any person acting with knowledge or any person to whom notice of a lien for forfeiture of property has been provided in accordance with subsection (j) of this Code section; to whom notice of seizure has been provided in accordance with subsection (i) of this Code section; or to whom notice of a civil proceeding alleging conduct giving rise to forfeiture under this Code section has been provided, if property subject to forfeiture is conveyed, alienated, disposed of, or otherwise rendered unavailable for forfeiture after the filing of a forfeiture lien notice or notice of seizure or after the filing and notice of a civil proceeding alleging conduct giving rise to forfeiture under this Code section, as the case may be. The state may recover judgment in an amount equal to the value of the lien but not to exceed the fair market value of the property or, if there is no lien, in an amount not to exceed the fair market value of the property, together with reasonable investigative expenses and attorney's fees. If a civil proceeding is pending, the action must be heard by the court in which the civil proceeding is pending.

(3) A prosecutor may file and prosecute in any of the courts of this state or of the United States or of any of the several states such civil actions as may be necessary to enforce any judgment rendered pursuant to this Code section.

(4) No person claiming an interest in property subject to forfeiture under this article may commence or maintain any action against the state concerning the validity of the alleged interest other than as provided in this Code section. Except as specifically authorized by this Code section, no person claiming an interest in such property may file any counterclaim or cross-claim to any action brought pursuant to this Code section.

(5) A civil action under this article must be commenced within five years after the last conduct giving rise to forfeiture or to the claim for relief became known or should have become known, excluding any time during which either the property or defendant is out of the state or in confinement or during which criminal proceedings relating to the same conduct are in progress.

(y) In the event the state fails to prove that the property is subject to forfeiture under this Code section, the property may still be subject to lien, levy, and other processes in order to satisfy any judgment which orders the payment of restitution based upon a conviction or judgment of Medicaid fraud.

(z) This Code section must be liberally construed to effectuate its remedial purposes. (Code 1981, § 49-4-146.3, enacted by Ga. L. 1997, p. 1596, § 3; Ga. L. 1998, p. 128, § 49; Ga. L. 1998, p. 664, § 2; Ga. L. 1999,

p. 296, § 24; Ga. L. 2000, p. 1225, § 7; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 362, § 36.)

Editor's notes. — Ga. L. 1997, p. 1596, § 1.1, not codified by the General Assembly, provides: "Sections 2 and 3 of this Act shall be known and may be cited as the 'Medicaid Fraud Forfeiture Act of 1997.'"

Ga. L. 1997, p. 1596, § 2, effective May 5, 1997, not codified by the General Assembly, provides: "The General Assembly finds that substantial financial losses to the state are being caused by acts of fraud directed at the Department of Medical Assistance and that there is a need to enhance the ability of the state to recover property and proceeds obtained through Medicaid fraud. It is the intent of this legislation to provide a legal mechanism for the seizure and forfeiture to the state of property and proceeds obtained

through acts of fraud committed to obtain medical assistance benefits or payments under Article 7 of Chapter 4 of Title 49."

Ga. L. 2000, p. 1225, § 8, not codified by the General Assembly, provides that the amendment to this Code section is applicable to civil actions filed on or after July 1, 2000.

Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 276 (1997).

49-4-147. Enforcement of liens, claims, or offsets against assistance.

Medical assistance payable by virtue of this article shall be subject to any claim, lien, or offset of this state against the payee and to any claim of the United States of America made against the payee pursuant to a federal statute, but such moneys shall not otherwise be subject to execution, levy, garnishment, or any other legal process; and no transfer or assignment of such at law or in equity shall be enforceable against the State of Georgia, the Department of Community Health, or the commissioner of community health; but medical assistance moneys, having been paid, are subject to all such actions and process. (Ga. L. 1977, p. 384, § 8; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

Counterclaim in aid recipient's underlying tort suit not required to enforce lien. — Where the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient's settlement proceeds to recover Medicaid sums that it expended to pay providers for the recipient's medical treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that DCH's lien was invalid, the trial court properly granted the summary judgment motion of defendant, the Commissioner of the DCH, as, contrary to the recipient's contention, the DCH was not required under O.C.G.A. § 49-4-147 or otherwise to file a counterclaim in the recipient's under-

lying tort suit in order to preserve its right to assert a lien under O.C.G.A. § 49-4-149(a) given that: (1) pursuant to 42 U.S.C. § 1396p(a)(1), no counterclaim was authorized against the recipient to recover for the medical assistance, but the lien against the money recovered from the third party was expressly authorized by O.C.G.A. § 49-4-149(a); and (2) the recipient was deemed under O.C.G.A. § 49-4-149(d) to have assigned to the DCH the recipient's rights of recovery against the third party that was liable for the recipient's injuries, such that the recipient was in no position to challenge the DCH's right to collect on that assignment from the settlement which the

recipient received. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

49-4-147.1. Claims by department against estate of Medicaid recipients.

(a) In accordance with applicable federal law and regulations, including those under Title XIX of the federal Social Security Act, the department may make claim against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf by the department. A claim shall be made against the estate of a deceased Medicaid recipient only if at the time of application for medical assistance the applicant received written notice that the medical assistance costs could be recovered from the applicant's estate and the applicant signed a written acknowledgment of receipt of such notice, the estate is otherwise subject to recovery, and if no hardship or other exemption exists. The commissioner shall waive such claim if he or she determines enforcement of the claim would result in substantial and unreasonable hardship to dependents of the individual against whose estate the claim exists.

(b) The estate recovery program established pursuant to this Code section shall not be effective any earlier than May 3, 2006. In no event shall the department make claims against the estate of a Medicaid recipient for the amount of any medical assistance payments made on such person's behalf prior to May 3, 2006.

(c) The commissioner shall delay execution of a claim against the estate where the dependents or heirs agree to pay the full amount of the claim in reasonable installments. (Ga. L. 1981, p. 917, § 1; Ga. L. 2006, p. 775, § 3/SB 572.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "federal Social Security Act" was substituted for "Social Security Amendments of 1965".

Pursuant to Code Section 28-9-5, in 2006, "and" was inserted near the end of the second sentence of subsection (a), and "May 3, 2006" was substituted for "the effective date of this subsection" in two places in subsection (b).

Editor's notes. — Former subsection (d), concerning exemptions for estates and an amendment to the state plan which had to

be submitted to the United States Department of Health and Human Services Centers for Medicare and Medicaid Services, was repealed on its own terms effective August 17, 2006.

U.S. Code. — Title XIX of the federal Social Security Act is codified at 42 U.S.C. § 1396 et seq.

Administrative rules and regulations. — Estate recovery, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Medical Assistance, Chapter 111-3-8.

JUDICIAL DECISIONS

Construction with other law. — Seeking to avoid the recovery of Medicaid payments from their mother's estate, when the daughters opted their mother out of Medicaid and

planned to sell some of the mother's property, those decisions were properly held to not be in the mother's best interest and supported the appointment of the county

conservator in that capacity. *Cruver v. Mitchell*, 289 Ga. App. 145, 656 S.E.2d 269 (2008).

Georgia Department of Community Health (DCH) erred by deeming recovery from a Medicaid claimant's estate appropriate under O.C.G.A. § 49-4-147.1(a) since

the claimant was still alive. But nothing in O.C.G.A. § 50-13-19(h) authorized the trial court to bar DCH from ever pursuing the claimant's estate to recover Medicaid payments. *Ga. Dep't of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, *Welfare Laws*, § 33 et seq.

C.J.S. — 81 C.J.S., *Social Security*, § 137.

49-4-147.2. Noneligibility of Department of Community Health to obtain nor be liable for interest on orders, judgments, and liquidated or unliquidated amounts; exemptions.

(a) Notwithstanding the provisions of Code Section 49-4-141, as used in this Code section the term “department” means the Department of Community Health or its officers, agents, or employees solely in their capacity as such officers, agents, or employees.

(b) Notwithstanding the provisions of Code Section 7-4-12, 7-4-15, 7-4-16, or 13-6-13, or any other statute or judicial construction thereof authorizing interest, the department shall not be eligible to obtain nor be liable for interest on orders, judgments, liquidated amounts, or unliquidated amounts unless such interest is:

- (1) Required by federal law or regulations;
- (2) Interest on penalties as required by Code Section 49-4-146.1;
- (3) Interest as required by Code Section 49-4-148; or

(4) Incurred by a failure to pay the penalty which may be transferred to the Indigent Care Trust Fund under Code Section 31-8-153.1 within 30 days after the penalty is imposed, in which event interest shall be paid from the thirty-first day following such imposition at the same rate as interest on penalties under Code Section 49-4-146.1. (Code 1981, § 49-4-147.2, enacted by Ga. L. 1990, p. 161, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 7.)

49-4-148. Recovery of assistance from third party liable for sickness, injury, disease, or disability; compromise or waiver of claim; compliance; effective date.

(a) Should medical assistance be paid in behalf of a recipient of medical assistance on account of any sickness, injury, disease, or disability for which another person is legally liable, the Department of Community Health may seek reimbursement for such medical assistance from such other person.

The department shall be subrogated, but only to the extent of the reasonable value of the medical assistance paid and attributable to such sickness, injury, disease, or disability, to the rights of the recipient of medical assistance against the person so legally liable; the commissioner of community health may compromise, settle, and execute a release of any such claim or waive, expressly, any such claim, in whole or in part, for the convenience of the Department of Community Health. This Code section is cumulative of the remedies of the Department of Community Health which specifically include, but are not limited to, the use of hospital liens as provided in Code Sections 44-14-470 through 44-14-477; and further, the payment of medical assistance to a hospital provider shall in no way be construed to discharge the obligation of a third party to satisfy a hospital lien.

(b) All insurers, as defined in Code Section 33-24-57.1, including but not limited to group health plans as defined in Section 607(1) of the federal Employee Retirement Security Act of 1974, managed care entities as defined in Code Section 33-20A-3, which offer health benefit plans, as defined in Code Section 33-24-59.5, pharmacy benefit managers, as defined in Code Section 26-4-110.1, and any other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service shall comply with this subsection. Such entities set forth in this subsection shall:

(1) Cooperate with the department in determining whether a person who is a recipient of medical assistance may be covered under that entity's health benefit plan and eligible to receive benefits thereunder for the medical services for which that medical assistance was provided and respond to any inquiry from the state regarding a claim for payment for any health care item or service submitted not later than three years after such item or service was provided;

(2) Accept the department's authorization for the provision of medical services on behalf of a recipient of medical assistance as the entity's authorization for the provision of those services;

(3) Comply with the requirements of Code Section 33-24-59.5, regarding the timely payment of claims submitted by the department for medical services provided to a recipient of medical assistance and covered by the health benefit plan, subject to the payment to the department of interest as provided in that Code section for failure to comply;

(4) Provide the department, on a quarterly basis, eligibility and claims payment data regarding applicants for medical assistance or recipients for medical assistance;

(5) Accept the assignment to the department or a recipient of medical assistance or any other entity of any rights to any payments for such medical care from a third party; and

(6) Agree not to deny a claim submitted by the department solely on the basis of the date of submission of the claim, type or format of the claim, or a failure to present proper documentation at the point-of-sale which is the basis of the claim, if:

(A) The claim is submitted to the department within three years from when the item or service was furnished; and

(B) Any action by the department to enforce its rights with respect to such claim commenced within six years of the department's submission of the claim.

The requirements of paragraphs (2) and (3) of this subsection shall only apply to a health benefit plan which is issued, issued for delivery, delivered, or renewed on or after April 28, 2001. (Ga. L. 1977, p. 384, § 9; Ga. L. 1978, p. 1520, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 8; Ga. L. 2007, p. 348, § 1/HB 505.)

The 2007 amendment, effective July 1, 2007, in subsection (b), in the first sentence, substituted "1974," for "1974 and" and inserted "pharmacy benefit managers, as defined in Code Section 26-4-110.1, and any other parties that are, by statute, contract, or agreement, legally responsible for payment of a claim for a health care item or service" near the end and substituted "Such entities set forth in this subsection" for "Those insurers" at the beginning of the second sentence, in paragraph (b)(1), substituted "entity's health" for "insurer's health" near the middle and added "and respond to any inquiry from the state regarding a claim for

payment for any health care item or service submitted not later than three years after such item or service was provided" at the end, in paragraph (b)(2), substituted "entity's authorization" for "insurer's authorization" in the middle and deleted "and" at the end, substituted a semicolon for a period at the end of paragraph (b)(3), and added paragraphs (b)(4) through (b)(6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "April 28, 2001" was substituted for "this subsection first becomes effective in 2001" at the end of the undesignated paragraph in subsection (b).

RESEARCH REFERENCES

ALR. — Collateral source rule — Aid or gratuity, 77 ALR3d 366.

Valuing damages in personal injury ac-

tions awarded for gratuitously rendered nursing and medical care, 49 ALR5th 685.

49-4-149. Lien of Department of Community Health against third parties; subrogation to recipients' insurance claims; assignment of recipients' claims.

(a) The Department of Community Health shall have a lien for the charges for medical care and treatment provided a medical assistance recipient upon any moneys or other property accruing to the recipient to whom such care was furnished or to his legal representatives as a result of sickness, injury, disease, disability, or death, due to the liability of a third party, which necessitated the medical care.

(b) The department may perfect and enforce any lien arising under subsection (a) of this Code section by following the procedures set forth for hospital liens in Code Sections 44-14-470 through 44-14-473; except that the department shall have one year from the date the last item of medical care was furnished to file its verified lien statement; and the statement shall be filed with the appropriate clerk of court in the county wherein the recipient resides and in Fulton County. The verified lien statement shall contain the following: the name and address of the person to whom medical care was furnished; the date of injury; the name and address of the provider or providers furnishing medical care; the dates of services; the amount claimed to be due for the care; and, to the best of the department's knowledge, the names and addresses of all persons, firms, or corporations claimed to be liable for damages arising from the injuries. This Code section shall not affect the priority of any attorney's lien.

(c) The department shall be subrogated, but only to the extent of the reasonable value of the medical assistance paid and attributable to any sickness, injury, disease, or disability, to the rights of medical assistance recipients to any benefits provided such recipients by virtue of private health care insurance contracts; provided, however, the right of subrogation does not attach to any recipient's rights to benefits paid or provided under private health care coverage prior to the receipt of written notice, by the carrier who issued the health care contract, of the exercise by the department of its subrogation rights.

(d) A recipient of medical assistance who receives medical care for which the department may be obligated to pay shall be deemed to have made assignment to the department of any rights of such person to any payments for such medical care from a third party, up to the amount of medical assistance actually paid by the department; provided, however, assignment does not attach to a recipient's right to any payments provided under private health care coverage prior to the receipt of written notice, by the carrier who issued the health care coverage, of the exercise by the department of its assignment. This subsection shall apply to a recipient only if notice of this subsection is given to the recipient at the time his application for medical assistance is filed. The assignment created by this subsection shall be effective until the recipient of medical assistance is no longer an eligible recipient for medical assistance. (Ga. L. 1978, p. 1520, § 2; Ga. L. 1979, p. 1293, § 2; Ga. L. 1999, p. 296, § 24.)

JUDICIAL DECISIONS

“Complete compensation rule” only applies to the subrogation rights of an insurance carrier who has received compensation from an injured party and it does not apply to Medicaid liens; thus, where the Georgia Department of Community Health (DCH)

had a departmental lien pursuant to O.C.G.A. § 49-4-149(a) against plaintiff recipient's settlement proceeds to recover Medicaid sums that the department expended to pay providers for the recipient's treatment, the DCH's lien was not precluded

despite the recipient's claim that the recipient had not received full and complete compensation for the recipient's injuries. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Department did not take steps to recover funds. — Summary judgment denying the claim of the Department of Medical Assistance (now Department of Community Health) was appropriate where the one-year statute of limitation for recovery on the lien had expired and there was no other viable cause of action made out by the department, where the only claim which the department could make to the money received by a recipient of medical care under the Medicaid program from the tortfeasors was that provided by the lien in O.C.G.A. § 49-4-149, and since the department took no steps to recover the funds as reimbursement from the tortfeasors. *Department of Medical Assistance v. Hallman*, 203 Ga. App. 615, 417 S.E.2d 218 (1992).

Lien valid against public agency as third party. — Where the Georgia Department of Community Health (DCH) filed a departmental lien against plaintiff recipient's settlement proceeds to recover Medicaid sums that the department expended to pay providers for the recipient's treatment, and the recipient filed a declaratory judgment suit seeking a declaration that DCH's lien was invalid, the trial court properly granted the summary judgment motion of defendant, the Commissioner of the DCH, as, contrary to the recipient's contentions, the DCH's lien under O.C.G.A. § 49-4-149(a) was not invalid even though the DCH was seeking to enforce the lien against another public agency (the board of regents of Georgia's university system, doing business as a medical college) because § 49-4-149(a) allowed the lien against moneys owed by a third party for its liability leading to the recipient's injury and, applying the definitions in O.C.G.A. § 49-4-141(4) and (9), third par-

ties included other public agencies. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Payment of attorney's fees. — Where the Georgia Department of Community Health (DCH) filed a departmental lien pursuant to O.C.G.A. § 49-4-149(a) against plaintiff recipient's settlement proceeds to recover Medicaid sums that it expended to pay providers for the recipient's treatment, and the recipient filed a declaratory judgment suit, seeking a declaration that the DCH's lien was invalid, the lien was properly found to be valid and, since the settlement proceeds were sufficient to cover both the DCH's lien and the sum of 40 percent of the settlement proceeds which the recipient had agreed to pay the recipient's attorney as a fee, the DCH was not obligated to reduce its lien to take into account the recipient's payment of attorney fees; such reductions only became an issue where the recipient's recovery was inadequate to cover both the DCH's lien and the attorney's lien, in which case lien priority would have been an issue, but it was not an issue in the recipient's case and so, like any other litigant, the recipient was obliged to bear the cost of the recipient's own attorney fees. *Padgett v. Toal*, 261 Ga. App. 154, 581 S.E.2d 744 (2003).

Priority of attorney's lien. — The liens established by O.C.G.A. §§ 49-4-149 and 44-14-470 are subject to attorney's lien. *Holland v. State Farm Mut. Auto. Ins. Co.*, 236 Ga. App. 832, 513 S.E.2d 48 (1999).

Lien applies to all funds recovered in tort claim. — Georgia Department of Community Health (DCH) lien for Medicaid payments made on behalf of recipients applied to all money recovered in the recipients' tort claims, not just the recovery denominated as the medical expense recovery, and DCH was not required to pay any part of the costs of collecting the reimbursement. *Richards v. Ga. Dep't of Cmty. Health*, 278 Ga. 757, 604 S.E.2d 815 (2004).

RESEARCH REFERENCES

ALR. — Collateral source rule — Aid or gratuity, 77 ALR3d 366.

49-4-149.1. Submission by department of plan for family supplementation of Medicaid payments upon federal removal of restrictions.

If the federal government removes restrictions upon family supplementation of Medicaid payments or approves a waiver allowing this supplementation, the Department of Community Health shall submit to the Health and Human Services Committee of the Senate and the Health and Human Services Committee of the House of Representatives a plan for this supplementation, which submission shall be made within 30 days after the earlier of the date the restrictions are removed or the date the waiver is approved. (Ga. L. 1982, p. 824, § 1; Code 1981, § 49-4-149.1, enacted by Ga. L. 1982, p. 824, § 2; Ga. L. 1992, p. 6, § 49; Ga. L. 1999, p. 296, § 24; Ga. L. 2005, p. 48, § 5/HB 309.)

49-4-150. Regulations as to maintenance and use of records; certificate as to use of information.

The Board of Community Health is directed to prescribe regulations governing the custody, use, and preservation of the records, papers, files, and communications of the Department of Community Health relating to applicants for and recipients of medical assistance. Except as otherwise provided in Code Section 49-4-151, such regulations shall provide safeguards restricting the use or disclosure of information concerning applicants for or recipients of medical assistance to purposes directly connected with the administration of the state plan. No person who obtains information by virtue of any such regulations shall use such information for commercial or political purposes, and any person seeking such information shall certify to the commissioner of community health, in writing, that the information obtained will not be used for commercial or political purposes. (Ga. L. 1977, p. 384, § 10; Ga. L. 1999, p. 296, § 24.)

49-4-151. Obtaining information for investigations and audits.

(a) The commissioner, for the purposes of investigating the nature, amount, and extent of services provided to a recipient of medical assistance or auditing information submitted to the department concerning a provider's entitlement to an amount of medical assistance, is authorized, personally or by his duly authorized representative, to administer oaths and to examine and copy books, papers, records (medical, business, or otherwise), or memoranda of a provider or of any other person possessed of information relating to reimbursable costs claimed by a provider or otherwise relating to the amount of medical assistance to which a provider is entitled. The commissioner may compel such examinations by means of subpoenas issued to require the custodian of such items to produce them for examination. A subpoena may be served by any sheriff, by his deputy, or by any other person not less than 18 years of age. Proof may be shown by

return of certificate endorsed on a copy of the subpoena. Subpoenas may also be served by registered or certified mail or statutory overnight delivery, and the return receipt shall constitute prima-facie proof of service. If any person shall fail to obey a subpoena issued and served under this subsection, then upon application of the commissioner, the superior court of the county in which such custodian was required to appear may issue an order requiring such custodian to comply with the subpoena and to produce the subpoenaed documentation. Furthermore, if any provider shall fail to obey a subpoena issued and served under this subsection with respect to any matter concerning a claim for medical assistance, that claim for medical assistance shall not be reimbursed by the Department of Community Health; and, if already reimbursed, the amount of medical assistance reimbursed shall be deducted from any amount of medical assistance which may then be or thereafter become payable to such provider.

(b) In the course of conducting investigations and audits, the Department of Community Health may request from any governmental department, board, commission, bureau, or agency information and assistance pertinent thereto. The Department of Community Health shall be entitled to have access to all such pertinent information which is within the custody of any governmental department, board, commission, bureau, or agency. (Ga. L. 1977, p. 384, § 10; Ga. L. 1999, p. 296, § 24; Ga. L. 2000, p. 1589, § 3.)

49-4-152. Research and demonstration projects; pilot projects to provide health care coverage and essential health care services; pharmacy assistance programs.

Subject to the availability of funds, the Department of Community Health is authorized to enter into agreements with and submit applications to departments and agencies of the government of the United States for purposes of accepting grants, receiving matching funds, and administering such grants and funds for research and demonstration projects pursuant to Title XI, XVIII, XIX, or XXI of the federal Social Security Act of 1935, as amended, or any other provision of federal law, without regard to the factor of state wideness and such other factors as may be required to be waived by the terms of the federal grant. Notwithstanding any other provision of law and subject to the availability of funds, the department is authorized to establish pilot projects to provide health care coverage and access to essential health care services or benefits to the uninsured and underinsured, including but not limited to pharmacy assistance programs. (Ga. L. 1977, p. 384, § 11; Ga. L. 1999, p. 296, § 24; Ga. L. 2001, p. 1240, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a hyphen between “state” and “wideness” was deleted in the first sentence.

Pursuant to Code Section 28-9-5, in 2001, "Title" was substituted for "Titles" in the first sentence of this Code section.

U.S. Code. — Titles XI, XVIII, XIX, and XXI of the federal Social Security Act of

1935, referred to in this Code section, are codified at 42 U.S.C. §§ 1320d et seq., 42 U.S.C. § 1395, 42 U.S.C. § 1396 (XIX and XXI), respectively.

49-4-152.1. Medicaid Prescription Drug Bidding and Rebate Program.

(a) The General Assembly finds that the department frequently must pay more for prescription drugs furnished to recipients of medical assistance under this article than certain health care providers pay for the same products. In order to control more effectively the costs of such drugs, the department may establish a Medicaid Prescription Drug Bidding and Rebate Program as provided in this Code section.

(b) The department may request sealed bids from prescription drug manufacturers for both brand name and generic equivalent prescription drugs specified by the department. The bids shall be proposed agreements by these manufacturers to adjust prices of drugs specified by the department to a price designated as the bid price when those drugs are supplied to recipients of medical assistance under this article. If the department has accepted a bid for a drug under this Code section, the department may not reimburse a provider of such drug for any equivalent drug not so successfully bid during the term of the contract awarded with regard to the drug so bid. The department may elect not to reimburse for any multisource drugs of a drug manufacturer which does not participate in the bid process or which bids prices considered excessive by the department.

(c) All prescription drugs for which bids are submitted must meet applicable standards of the U.S. Pharmacopoeia, the State Board of Pharmacy, and be guaranteed as meeting all requirements, regulations, and comparison data under the Federal Food, Drug, and Cosmetic Act and the regulations thereunder. The manufacturer of a drug which is bid must have an FDA approved New Drug Application or an abbreviated New Drug Application and must have a product liability insurance policy extending to pharmacy providers under this article, but the policy may condition coverage thereunder upon the provider's complying with all applicable federal and state laws and regulations promulgated thereunder.

(d) Nothing in this Code section shall be construed to change the practice of pharmacies having provider agreements under this article with respect to their purchases and sales of and reimbursements for drugs furnished to recipients of medical assistance under this article. Adjustment rebates shall be made by the successfully bidding drug manufacturer to the department and be paid quarterly to the department.

(e) In the event no acceptable bids are received for a drug for which a request for bid was made, the department may select a single drug supplier for the drug or establish one price for such drug which the department will

reimburse therefor, but this shall not restrict the department from establishing one price for any drug upon which the department does not request bids.

(f) Except when in conflict with this Code section, Article 3 of Chapter 5 of Title 50, relating to state purchases by the Department of Administrative Services, shall apply to bidding and purchasing of prescription drugs by the department pursuant to this Code section. The prohibitions against financial interest in Code Section 50-5-78 shall be applicable to the commissioner and other employees of the department and any violation thereof punishable as provided in subsection (d) of that Code section. Contracts for the purchase of prescription drugs made in violation of this Code section shall be void and of no effect and liability therefor shall be the same as that provided in Code Section 50-5-79.

(g) The department is authorized to accept rebates from any drug manufacturer for providing information to that manufacturer regarding utilization by Medicaid recipients of that manufacturer's drugs as long as the anonymity of the recipients is maintained. The department is further authorized to verify and audit claims for reimbursement for drugs successfully bid, provide the manufacturers thereof with the information so obtained, and to adjust the department's claim for rebates based upon that information.

(h) The provisions of this Code section shall be construed in conformity with Code Section 49-4-157. (Code 1981, § 49-4-152.1, enacted by Ga. L. 1989, p. 852, § 1.)

U.S. Code. — The Federal Food, Drug, and Cosmetic Act, referred to in subsection (c) of this Code section, is codified at 21 U.S.C. § 301 et seq.

49-4-152.2. Rebates for sole-source and multiple-source drugs included in Controlled Medical Assistance Drug List.

(a) The department is authorized to negotiate and enter into agreements directly with manufacturers and distributors whose prescription drug products are sold in the state for sole-source and multiple-source drugs to be paid for under the state plan for eligible recipients under this article. Such agreements shall provide for a periodic rebate of a negotiated percentage of the total product cost to be paid by the manufacturer or distributor of a specific product covered under the state plan.

(b) Prescription drug products shall be included in the Controlled Medical Assistance Drug List only upon satisfaction and completion of the application and approval process established by the department. Those products for which a rebate has been successfully negotiated shall automatically be included in the Controlled Medical Assistance Drug List for a period of time coterminous with the negotiated rebate.

(c) If there has been a failure to negotiate or renew a rebate agreement for a specific prescription drug product, the pharmaceutical manufacturer or distributor of that product shall disclose to the department its most favorable pricing arrangements available to state and nonstate government purchasers of such products. If the department determines that the product needs to be included in the Controlled Medical Assistance Drug List, the department shall establish the amount of the rebate for such product based upon the price information provided by the manufacturer or distributor. The determination as to whether a product should be included in the Controlled Medical Assistance Drug List shall be based upon the product's efficacy, cost, medical necessity, and safety.

(d) The provisions of this Code section shall be construed in conformity with Code Section 49-4-157. (Code 1981, § 49-4-152.2, enacted by Ga. L. 1990, p. 1808, § 2.)

49-4-152.3. Reuse of unit dosage drugs.

(a) As used in this Code section, the term:

(1) "Long-term care facility" or "facility" means an intermediate care home, skilled nursing home, or intermingled home subject to regulation as such by the Department of Community Health.

(2) "Unit dosage drug" means any dangerous drug regulated under Chapter 13 of Title 16 which is individually packaged to contain only one dosage of such drug and which includes on such packaging the brand or generic name, strength, lot number, and expiration date of such drug.

(b) Unit dosage drugs may be returned to the dispensing pharmacy for reuse. The department and the State Board of Pharmacy shall promulgate regulations which permit the reuse of prescribed but unused unit dosage drugs for a resident of a long-term care facility other than the resident for whom the drug was originally prescribed, but only when:

(1) The cost of those drugs has been paid for or reimbursed under this article; and

(2) The drugs are unused because the resident for whom the drugs were originally prescribed:

(A) Has died;

(B) Has had such resident's prescription changed so as no longer to require those drugs; or

(C) Otherwise no longer needs those drugs.

The consent of the resident for whom the unused drugs were originally prescribed shall not be required for such reuse of prescribed unit doses. Such reuse shall only be authorized by a resident of a long-term care facility

for whom the specific dosage of that unused drug has been prescribed when payment or reimbursement for that drug for that resident is otherwise permitted under this article. Nothing in this Code section shall require a pharmaceutical manufacturer to provide a rebate based on the reuse of any unused unit dosage drug. (Code 1981, § 49-4-152.3, enacted by Ga. L. 1997, p. 939, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in paragraph (a)(1).

49-4-152.4. Department contracts to require refund of prescription drug rebates.

The department shall provide that any department contract with a provider of medical assistance which is renewed or executed on or after July 1, 1997, shall require a refund to the department of any prescription drug rebate, as established in this article or in federal law in Section 1927 of Title XIX of the Social Security Act, as amended, obtained by the provider for prescription drugs furnished to recipients of medical assistance pursuant to that contract. (Code 1981, § 49-4-152.4, enacted by Ga. L. 1997, p. 1385, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 49-4-152.3, was redesignated as Code Section 49-4-152.4.

U.S. Code. — Section 1927 of Title XIX of the Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 1396r-8.

49-4-152.5. Restocking fees.

In the provision of medical assistance pursuant to this article, the department shall allow for the payment and coverage of appropriate restocking fees incurred by a pharmacy which receives and dispenses prescription drugs pursuant to Article 11 of Chapter 4 of Title 26, the “Utilization of Unused Prescription Drugs Act.” (Code 1981, § 49-4-152.5, enacted by Ga. L. 2006, p. 152, § 2/HB 1178; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language in this Code section.

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 197 (2006).

49-4-153. Administrative hearings and appeals; judicial review; contested cases involving imposition of remedial or punitive measure against nursing facility.

(a) The Board of Community Health is authorized to establish regulations regarding the manner in which the appeals set forth in subsection (b) of this Code section shall be conducted.

(b)(1) Any applicant for medical assistance whose application is denied or is not acted upon with reasonable promptness and any recipient of medical assistance aggrieved by the action or inaction of the Department of Community Health as to any medical or remedial care or service which such recipient alleges should be reimbursed under the terms of the state plan which was in effect on the date on which such care or service was rendered or is sought to be rendered shall be entitled to a hearing upon his or her request for such in writing and in accordance with the applicable rules and regulations of the department and the Office of State Administrative Hearings. As a result of the written request for hearing, a written recommendation shall be rendered in writing by the administrative law judge assigned to hear the matter. Should a decision be adverse to a party and should a party desire to appeal that decision, the party must file a request in writing to the commissioner or the commissioner's designated representative within 30 days of his or her receipt of the hearing decision. The commissioner, or the commissioner's designated representative, has 30 days from the receipt of the request for appeal to affirm, modify, or reverse the decision appealed from. A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each agency shall maintain a properly indexed file of all decisions in contested cases, which file shall be open for public inspection except those expressly made confidential or privileged by statute. If the commissioner fails to issue a decision, the initial recommended decision shall become the final administrative decision of the commissioner.

(2)(A) A provider of medical assistance may request a hearing on a decision of the Department of Community Health with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of

the provider's request for hearing to the Office of State Administrative Hearings. The provider's request for hearing shall identify the issues under appeal and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the Department of Community Health which is the basis for the appeal.

(B) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(C) A request for hearing by a nursing home provider shall stay any recovery or recoupment action.

(D) Should the decision of the administrative law judge be adverse to a party and should a party desire to appeal that decision, the party must file a request therefor, in writing, with the commissioner within ten days of his or her receipt of the hearing decision. Such a request must enumerate all factual and legal errors alleged by the party. The commissioner, or the commissioner's designated representative, may affirm, modify, or reverse the decision appealed from.

(3) A person or institution who either has been refused enrollment as a provider in the state plan or has been terminated as a provider by the Department of Community Health shall be entitled to a hearing; provided, however, that no entitlement to a hearing before the department shall lie for refusals or terminations based on the want of any license, permit, certificate, approval, registration, charter, or other form of permission issued by an entity other than the Department of Community Health, which form of permission is required by law either to render care or to receive medical assistance in which federal financial participation is available. The final determination (subject to judicial review, if any) of such an entity denying issuance of such a form of permission shall be binding on and unreviewable by the Department of Community Health. In cases where an entitlement to a hearing before the Department of Community Health, pursuant to this paragraph, lies, the Department of Community Health shall give written notice of either the denial of enrollment or termination from enrollment to the affected person or institution; and such notice shall include the reasons of the

Department of Community Health for denial or termination. Should such a person or institution desire to contest the initial decision of the Department of Community Health, he or she must give written notice of his or her appeal to the commissioner of community health within ten days after the date on which the notice of denial or notice of termination was transmitted to him or her. A hearing shall be scheduled and commenced within 20 days after the date on which the commissioner receives the notice of appeal; and the commissioner or his or her designee or designees shall render a final administrative decision as soon as practicable thereafter.

(c) If any aggrieved party exhausts all the administrative remedies provided in this Code section, judicial review of the final decision of the commissioner may be obtained by filing a petition within 30 days after the service of the final decision of the commissioner or, if a rehearing is requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. Copies of the petition shall be served upon the commissioner and all parties of record. The petition shall state the nature of the petitioner's interest, the facts showing that the petitioner is aggrieved by the decision, and any grounds upon which the petitioner contends that the decision should be reversed or modified. Judicial review of the commissioner's decision may be obtained in the same manner and under the same standards as are applicable to those contested cases which are reviewable pursuant to Code Section 50-13-19; provided, however, that no other provision of Chapter 13 of Title 50 shall be applicable to the department with the exception of Code Sections 50-13-13 and 50-13-15. Notwithstanding any other provision of law, a stay of the commissioner's final decision may be granted by a reviewing court to a provider of medical assistance only on condition that such provider posts bond with the commissioner in favor of the state, with good and sufficient surety thereon by a surety company licensed to do business in this state, in an amount determined by the commissioner to be sufficient to recompense the state for all medical assistance which otherwise would not be paid to the provider but for the granting of such a stay. A stay may be granted and renewed for time intervals up to three months, so long as bond is posted for every interval of time in which the stay is in effect.

(d) All contested cases involving the imposition of a remedial or punitive measure against a nursing facility by the Department of Community Health shall be conducted in the manner provided for in subsection (l) of Code Section 31-2-11, but only if such remedial or punitive measure is based upon findings made by the Department of Community Health in its capacity as the state survey agency for the Georgia Medicaid program.

(e)(1) A dentist acting pursuant to subsection (b) of Code Section 33-21A-8 or a provider of medical assistance may request a hearing on a decision of a care management organization with respect to the provisions set forth in subsection (b) of Code Section 33-21A-8 or with respect to a denial or nonpayment of or the determination of the amount of reimbursement paid or payable to such provider on a certain item of medical or remedial care of service rendered by such provider by filing a written request for a hearing in accordance with Code Sections 50-13-13 and 50-13-15 with the Department of Community Health. The Department of Community Health shall, within 15 business days of receiving the request for hearing from the provider, transmit a copy of the provider's request for hearing to the Office of State Administrative Hearings but shall not be a party to the proceedings. The provider's request for hearing shall identify the care management organization with which the provider has a dispute, the issues under appeal, and specify the relief requested by the provider. The request for hearing shall be filed no later than 15 business days after the provider of medical assistance receives the decision of the care management organization which is the basis for the appeal. Notwithstanding any other provision of this title, an administrative law judge appointed pursuant to paragraph (2) of this subsection shall be authorized to allow a provider of medical assistance to consolidate pending complaints or claims against a care management organization that are based on the same or similar payment or coverage issues, as determined by such administrative law judge. Such consolidation shall include disposition of the same or similar claims through a single hearing that adjudicates the total amount of such consolidated claims.

(2) The Office of State Administrative Hearings shall assign an administrative law judge to hear the dispute within 15 days after receiving the request. The hearing is required to commence no later than 90 days after the assignment of the case to an administrative law judge, and the administrative law judge shall issue a written decision on the matter no later than 30 days after the close of the record except when it is determined that the complexity of the issues and the length of the record require an extension of these periods and an order is issued by an administrative law judge so providing, but no longer than 30 days. Such time requirements can be extended by written consent of all the parties. Failure of the administrative law judge to comply with the above time deadlines shall not render the case moot.

(3) The decision of the administrative law judge shall be the final administrative remedy available to the provider. Review thereafter shall proceed in accordance with Code Section 50-13-19. The fees and expenses of the Office of State Administrative Hearings may, at the administrative law judge's discretion, be assessed against the party against whom the administrative law judge enters his or her order. (Ga. L. 1977, p. 384, § 12; Ga. L. 1988, p. 288, § 1; Ga. L. 1993, p. 1290, § 3; Ga. L.

1994, p. 1856, § 2; Ga. L. 1997, p. 679, § 2; Ga. L. 1998, p. 576, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2006, p. 775, §§ 4, 5/SB 572; Ga. L. 2008, p. 704, § 2/HB 1234; Ga. L. 2009, p. 453, § 1-53/HB 228.)

The 2008 amendment, effective May 13, 2008, in paragraph (e)(1), in the first sentence, inserted “dentist acting pursuant to subsection (b) of Code Section 33-21A-8 or a” near the beginning, and inserted “the provisions set forth in subsection (b) of Code Section 33-21A-8 or with respect to” near the middle, in the second sentence, deleted a comma following “Office of State Administrative Hearings”, and added the last two sentences.

The 2009 amendment, effective July 1, 2009, in subsection (d), substituted “Code Section 31-2-11” for “Code Section 31-2-6”, and substituted “Department of Community Health” for “Department of Human Resources”.

Law reviews. — For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

Editor’s notes. — Ga. L. 1994, p. 1856, § 5, not codified by the General Assembly,

provides: “This Act shall become effective July 1, 1994, for purposes of commencing transfer of positions, independent hearing officers, employees, and equipment and for general administrative purposes. The Office of State Administrative Hearings may commence the performance of its duties on and after July 1, 1994, and shall assume full responsibility for the performance of its duties on and after April 1, 1995. The Office of State Administrative Hearings shall, where necessary for any class of hearings, promulgate rules and regulations in order to comply with all federal and state procedural requirements. During the period between July 1, 1994, and April 1, 1995, covered agencies may continue to conduct covered administrative hearings as provided by prior law; but on and after April 1, 1995, all such hearings in new and, where practical, in pending proceedings shall be conducted as provided in this Act.”

JUDICIAL DECISIONS

Service. — Based on use of the term “service” for purposes of O.C.G.A. § 49-4-153(c) with respect to timing for filing the petition for judicial review, as opposed to use of the word “receipt” when discussing timing issues under § 49-4-153(b)(2)(D) and (b)(1), the timing provision in § 49-4-153(c) has been construed to require that a petition for judicial review was to be filed within 30 days after the date on which the final decision was mailed by the Commissioner for the Department of Family and Children Services. *Gladowski v. Dep’t of Family & Children Servs.*, 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Agency interpretation not entitled to judicial deference. — Decision of the department of community health (DCH) interpreting the phrase “last approved cost report” as used in the DCH’s policies and procedures manual for purposes of computing an owner’s reimbursement rate was not entitled to judicial deference because the phrase was not used in a statute, rule, or regulation, but rather in the manual, the terms of which had not undergone the scrutiny afforded a stat-

ute during the legislative process or the adoption process. *Pruitt Corp. v. Ga. Dep’t of Cmty. Health*, 284 Ga. 158, 664 S.E.2d 223 (2008).

Exhaustion of administrative remedies. — The Commissioner of the Department of Community Health, members of the board of that Department, and the Director of the Department’s Division of Medical Assistance could not avoid judicial review for want of exhaustion of administrative remedies where the very rules of the department precluded both hearing and a remedy sought by a Medicaid-eligible woman; moreover, no adequate administrative remedy existed which the woman could have exhausted. *Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 651 S.E.2d 36 (2007).

Untimely petition. — Georgia Civil Practice Act’s three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid applicant’s claim for benefits, pursuant to O.C.G.A. § 50-13-19; similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly

deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c), and, accordingly, the applicant's petition was properly denied as untimely. *Gladowski v. Dep't of Family & Children Servs.*, 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Applicable standard of review. — Trial court erred by failing to apply the proper standard of review to a decision of the Georgia Department of Community Health that terminated a claimant's medical assistance under a Medicaid waiver program available to qualifying children. The appel-

late court directed that the standard of review set forth in O.C.G.A. § 49-4-153(c) was applicable to the case, which called for application of the substantial evidence standard set forth in the Administrative Procedure Act, O.C.G.A. § 50-13-19. *Greene v. Dep't of Cmty. Health*, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

Cited in *Hodges v. Smith*, 910 F. Supp. 646 (N.D. Ga. 1995); *Ga. Dep't of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

49-4-154. Powers and duties retained by Department of Human Resources (Department of Community Health).

(a) The status, position, and rights of persons transferred from the Department of Human Resources (now known as the Department of Community Health for these purposes) to the Department of Medical Assistance pursuant to Ga. L. 1977, p. 384 shall not be affected by the transfer, in and of itself; and such persons shall retain, inter alia, all rights of rank or grade; rights to vacation, sick pay, and leave; rights under any retirement plan; and any other rights under any law or administrative policy.

(b) The Department of Human Resources (now known as the Department of Community Health for these purposes) shall retain, in accordance with terms of the state plan, the functions, and all tangible things and employees relating thereto, of:

(1) Establishing and maintaining certain standards for certain institutions and agencies seeking to become or remain providers and shall finally determine and certify whether such institutions and agencies meet such standards;

(2) Determining and certifying the eligibility of certain applicants for and recipients of medical assistance; and

(3) Prescribing regulations to require that applicants for medical assistance be given clear and easily understandable notice that all books, papers, records, and memoranda of the provider relating to the provision of medical assistance to the applicant will be made available, upon request, to the commissioner of medical assistance or his representative and that, by accepting medical assistance, the applicant thereby consents to the providing of such books, papers, records, and memoranda to the commissioner of medical assistance or his representative. (Ga. L. 1977, p. 384, § 13; Ga. L. 1994, p. 97, § 49; Ga. L. 2009, p. 453, § 1-54/HB 228.)

The 2009 amendment, effective July 1, 2009, inserted “(now known as the Department of Community Health for these purposes)” in subsection (a), and in the introductory language of subsection (b).

49-4-155. Department of Community Health to succeed to existing rules, regulations, policies, procedures, and administrative orders.

The Department of Community Health shall succeed to all the rules, regulations, policies, procedures, and administrative orders of the Department of Human Resources (now known as the Department of Human Services) transferred to the Department of Medical Assistance pursuant to the previously existing provisions of this Code section and that are in effect on June 30, 1999, and shall further succeed to any rights, privileges, entitlements, obligations, and duties of the Department of Human Resources (now known as the Department of Human Services) that are in effect on June 30, 1999, to which the Department of Medical Assistance succeeded pursuant to the previously existing provisions of Code Section 49-4-156. (Ga. L. 1977, p. 384, § 14; Ga. L. 1999, p. 296, § 20; Ga. L. 2009, p. 453, § 1-55/HB 228.)

The 2009 amendment, effective July 1, 2009, inserted “(now known as the Department of Human Services)” twice in this Code section.

49-4-156. Tax exemption for health maintenance organizations with respect to contracts pursuant to this article.

The provisions of Code Section 33-21-16 shall not apply to health maintenance organizations with respect to contracts entered into with the department for the furnishing of health care services to persons pursuant to this article. (Code 1981, § 49-4-156, enacted by Ga. L. 2005, p. 1438, § 3/SB 140.)

Cross references. — Health Maintenance Organizations, Ch. 21, T. 33. existing transactions was based on Ga. L. 1977, p. 384, § 15 and was repealed by Ga. L.

Editor’s notes. — The former Code section, concerning rights and duties under 1999, p. 296, § 20, effective July 1, 1999.

49-4-156.1. Reimbursement for services rendered under Article 5 of Chapter 6 of this title.

It is the intention of the General Assembly that the Department of Community Health be authorized to take those actions necessary to provide reimbursement under this article for services rendered under Article 5 of Chapter 6 of this title, relating to community care for the elderly. (Ga. L. 1982, p. 2248, § 2; Code 1981, § 49-4-156.1, enacted by Ga. L. 1982, p. 2248, § 3; Ga. L. 1999, p. 296, § 24.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “this title” was substituted for “Title 49”.

49-4-157. Construction of this article with federal act.

It is the intention of the General Assembly that this article be construed consistently with Title XIX of the federal Social Security Act of 1935, as amended, and so as to authorize the Department of Community Health, within the appropriations provided to it, to administer the state plan in a manner so as to receive the maximum amount of federal financial participation available in expenditures made under the state plan. (Ga. L. 1977, p. 384, § 16; Ga. L. 1999, p. 296, § 24.)

U.S. Code. — Title XIX of the federal Social Security Act of 1935, referred to in this Code section, is codified at 42 U.S.C. § 1396 et seq.

JUDICIAL DECISIONS

State’s rules restricting reimbursement for abortions inconsistent with Social Security Act. — The rules promulgated by Georgia’s Department of Medical Assistance (now Department of Community Health) restricting reimbursement to Medicaid enrollees for medically necessary abortions are inconsistent with Title XIX of the Social Security Act, 42 U.S.C. § 1396 et seq., and because the plaintiff classes will suffer irreparable injury for which there is no adequate legal remedy, the defendants, their agents and employees, must be permanently enjoined from refusing to provide Medicaid reimbursement to the members of the plaintiff classes for the provision of all medically necessary abor-

tions. *Doe v. Busbee*, 481 F. Supp. 46 (N.D. Ga. 1979).

Exhaustion of administrative remedies. — The Commissioner of the Department of Community Health, members of the board of that Department, and the Director of the Department’s Division of Medical Assistance could not avoid judicial review for want of exhaustion of administrative remedies where the very rules of the department precluded both hearing and a remedy sought by a Medicaid-eligible woman; moreover, no adequate administrative remedy existed which the woman could have exhausted. *Feminist Women’s Health Ctr. v. Burgess*, 282 Ga. 433, 651 S.E.2d 36 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Limited use of state funds to pay for abortions to assure maximum federal financial participation. — State funds may not be expended for any abortions except those in pregnancies wherein the life of the mother would be endangered if the fetus were carried to term, especially given the fact that it is the intention of the General Assembly that Ga. L. 1977, p. 384, § 1 et seq. (see O.C.G.A.

§ 49-4-140 et seq.) be construed so as to accomplish maximum federal financial participation. If the state plan were to be administered so as to assure payment for abortions other than those where the life of the mother would be threatened if the fetus were carried to term, no federal funds would be available for that purpose. 1977 Op. Att’y Gen. No. 77-64.

ARTICLE 7A

LONG-TERM CARE PARTNERSHIP PROGRAM

Editor's notes. — Former Code Section 49-4-166 provided for a contingent effective date based on the repeal of federal provisions in the Omnibus Budget Reconciliation

Act of 1993, however Code Section 49-4-166 was repealed by Ga. L. 2006, p. 185, § 6, effective April 19, 2006.

49-4-160. Short title.

This article shall be known and may be cited as the “Georgia Long-term Care Partnership Program Act.” (Code 1981, § 49-4-160, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465.)

Cross references. — Long-term care insurance, § 33-42-1 et seq.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, § 312.

49-4-161. Definitions.

As used in this article, the term:

(1) “Asset disregard” means, with regard to state Medicaid benefits, the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy.

(2) “Commissioner” means the Commissioner of Insurance.

(3) “Department” means the Department of Community Health.

(4) “Georgia Qualified Long-term Care Partnership Program approved policy” means a long-term care insurance policy that meets the model regulations and requirements of the National Association of Insurance Commissioners’ long-term care insurance model regulation and long-term care insurance model act as specified in 42 U.S.C. Section 1917(b) and Section 6021 of the Federal Deficit Reduction Act of 2005 and the Commissioner certifies such policy as meeting these requirements.

(5) “State Medicaid program” means the medical assistance program established in this state under Title XIX of the federal Social Security Act.

(6) “State plan amendment” means a state Medicaid plan amendment made to the federal Department of Health and Human Services that

provides for the disregard of any assets or resources in an amount equal to the insurance benefit payments that are made to or on behalf of an individual who is a beneficiary under a qualified long-term care insurance partnership policy. (Code 1981, § 49-4-161, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 1/HB 1451; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (4).

Code Commission notes. — The amend-

ment of this Code section by Ga. L. 2006, p. 72, § 49, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 185, § 1. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

49-4-162. Program established; purposes; assets to be disregarded with respect to Medicaid eligibility or payment or recovery by the state of payments for medical services.

(a) In accordance with Section 6021 of the Federal Deficit Reduction Act of 2005, there is established the Georgia Qualified Long-term Care Partnership Program which shall be administered by the Department of Community Health, with the assistance of the Commissioner and the Department of Human Services, and which shall be for the following purposes:

(1) To provide incentives for individuals to insure against the costs of providing for their long-term care needs;

(2) To provide a mechanism for individuals to qualify for coverage of the cost of their long-term care needs under the state Medicaid program without first being required to substantially exhaust their resources;

(3) To provide counseling services through the Division of Aging Services of the Department of Human Services to individuals in planning of their long-term care needs; and

(4) To alleviate the financial burden on the state's Medicaid program by encouraging the pursuit of private initiatives.

(b) Upon the exhaustion of benefits or upon the diminishment of assets below the anticipated remaining benefits under a Georgia Qualified Long-term Care Partnership Program approved policy, certain assets of an individual, as provided in subsection (c) of this Code section, shall not be considered when determining any of the following:

(1) Medicaid eligibility;

(2) The amount of any Medicaid payment; and

(3) Any subsequent recovery by the state of a payment for medical services.

(c) The department shall:

(1) Not later than November 15, 2006, make application to the federal Department of Health and Human Services for a state plan amendment to establish that the assets an individual owns and may retain under Medicaid and still qualify for benefits under Medicaid at the time the individual applies for benefits is increased dollar for dollar for each dollar paid out under the individual's long-term care insurance policy if the individual is the beneficiary of a qualified long-term care insurance partnership policy purchased through the Georgia Qualified Long-term Care Partnership Program; and

(2) Provide information and technical assistance to the Commissioner to assure that any individual who sells a qualified long-term care insurance partnership policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care. (Code 1981, § 49-4-162, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 2/HB 1451; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted "Department of Human Services" for "Department of Human Resources" in the introductory language, and in paragraph (a)(3).

Code Commission notes. — The amendment of this Code section by Ga. L. 2006, p. 72, § 49/SB 465, irreconcilably conflicted with and was treated as superseded by Ga. L. 2006, p. 185, § 2/HB 1451. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2006,

"Georgia Qualified Long-term Care Partnership Program" was substituted for "Georgia Long-term Care Partnership Program" in subsection (a) and paragraph (c)(1), and "Not later than November 15, 2006" was substituted for "Within 180 days of the effective date of this Code section" at the beginning of paragraph (c)(1).

Pursuant to Code Section 28-9-5, in 2009, "of Insurance" was deleted following "Commissioner" in the introductory language of subsection (a).

49-4-163. Eligibility for asset disregard; reciprocal agreements with other states to extend asset disregard mutually.

(a) An individual who is a beneficiary of a Georgia Qualified Long-term Care Partnership Program approved policy is eligible for assistance under the state Medicaid program using asset disregard pursuant to the provisions of subsection (c) of Code Section 49-4-162.

(b) If the Georgia Qualified Long-term Care Partnership Program is discontinued, an individual who purchased a Georgia Qualified Long-term Care Partnership Program approved policy prior to the date the program was discontinued shall be eligible to receive asset disregard if allowed as provided by Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005.

(c) The department may enter into reciprocal agreements with other states to extend the asset disregard to residents of the state who purchase long-term care policies in another state which has asset disregard provisions

as established under this article as provided by Title VI, Section 6021 of the Federal Deficit Reduction Act of 2005. (Code 1981, § 49-4-163, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2006, p. 185, § 3/HB 1451.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “Georgia Qualified Long-term Care Partnership Program” was substituted for “Georgia Long-term Care Partnership Program” near the beginning of subsection (b).

49-4-164. Requirements for selling qualified long-term care insurance partnership policies; rules and regulations; reports.

(a) The Commissioner shall:

(1) Develop requirements to ensure that any individual who sells a qualified long-term care insurance partnership policy receives training and demonstrates evidence of an understanding of such policies and how they relate to other public and private coverage of long-term care; and

(2) Not impose any requirement affecting the terms or benefits of qualified long-term care partnership policies unless the Commissioner imposes such a requirement on all long-term care policies sold in this state without regard to whether the policy is covered under the partnership or is offered in connection with such partnership.

(b) The department and the Commissioner are authorized to promulgate rules and regulations to implement and administer the provisions of this article.

(c) The issuers of qualified long-term care partnership policies in this state shall provide regular reports to both the secretary of the United States Department of Health and Human Services in accordance with federal law and regulations and to the department and the Commissioner as provided in Section 6021 of the Federal Deficit Reduction Act of 2005. (Code 1981, § 49-4-164, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 185, § 4/HB 1451.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “secretary of the United States” was substituted for “Secretary of the” in subsection (c).

49-4-165. Notice to consumers.

(a) A qualified long-term care insurance partnership policy shall contain a summary notice to the consumer in plain language on the current law pertaining to asset disregard and asset tests.

(b) The notice to the consumer under subsection (a) of this Code section shall be developed by the Commissioner of Insurance. (Code 1981, § 49-4-165, enacted by Ga. L. 2005, p. 823, § 1/HB 643; Ga. L. 2006, p. 185, § 5/HB 1451.)

49-4-166. Effective date.

Repealed by Ga. L. 2006, p. 185 § 6/HB 1451, effective April 19, 2006.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the reservation of this Code section designation was deleted.

Editor's notes. — This Code section was based on Code 1981, § 49-4-166, enacted by Ga. L. 2005, p. 823, § 1/HB 643.

ARTICLE 7B**STATE FALSE MEDICAID CLAIMS ACT**

Effective date. — This article became effective May 24, 2007.

Editor's notes. — Ga. L. 2007, p. 355, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'State False Medicaid Claims Act.'"

Ga. L. 2007, p. 355, § 2, not codified by the General Assembly, provides: "The General Assembly recognizes that the submission of false or fraudulent claims to the Georgia Medicaid program can and does cause the state treasury to incur serious financial losses which results in direct harm to the taxpayers of this state. This Act is intended to provide a partial remedy for this problem by providing specific procedures whereby this state, and private citizens acting for and on behalf of this state, may bring civil actions against

persons and entities who have obtained state funds through the submission of false or fraudulent claims to state agencies. This Act, in its provision for double and sometimes treble damages, is remedial in purpose, and is intended not to punish, but insofar as possible to make the state treasury whole for both the direct and indirect losses caused by the submission of false or fraudulent claims resulting in payments by this state or state agencies. By receiving a portion of the recovery in civil actions brought under this article, 'whistle blowers' are encouraged to come forward when they have information about the submission of false claims to the Georgia Medicaid program, and rewarded when their initiative results in civil recoveries for this state."

49-4-168. Definitions.

As used in this article, the term:

(1) "Claim" includes any request or demand, whether under a contract or otherwise, for money, property, or services, which is made to the Georgia Medicaid program, or to any officer, employee, fiscal intermediary, grantee or contractor of the Georgia Medicaid program, or to other persons or entities if it results in payments by the Georgia Medicaid program, if the Georgia Medicaid program provides or will provide any portion of the money or property requested or demanded, or if the Georgia Medicaid program will reimburse the contractor, grantee, or other recipient for any portion of the money or property requested or demanded. A claim includes a request or demand made orally, in writing, electronically, or magnetically. Each claim may be treated as a separate claim.

(2) "Knowing" and "knowingly" mean that a person, with respect to information:

(A) Has actual knowledge of the information;

(B) Acts in deliberate ignorance of the truth or falsity of the information; or

(C) Acts in reckless disregard of the truth or falsity of the information. No proof of specific intent to defraud is required.

(3) "Person" means any natural person, corporation, company, association, firm, partnership, society, joint-stock company, or any other entity with capacity to sue or be sued. (Code 1981, § 49-4-168, enacted by Ga. L. 2007, p. 355, § 3/HB 551.)

Law reviews. — For article, "A 'False the 'State False Medicaid Claims Act'," see Claims Act' Is Finally Enacted in Georgia: 13 Ga. St. B.J. 12 (2007). What Georgia Lawyers Should Know About

49-4-168.1. Civil penalties for false or fraudulent Medicaid claims.

(a) Any person who:

(1) Knowingly presents or causes to be presented to the Georgia Medicaid program a false or fraudulent claim for payment or approval;

(2) Knowingly makes, uses, or causes to be made or used a false record or statement to get a false or fraudulent claim paid or approved by the Georgia Medicaid program;

(3) Conspires to defraud the Georgia Medicaid program by getting a false or fraudulent claim allowed or paid;

(4) Has possession, custody, or control of property or money used or to be used by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program or willfully to conceal the property, delivers, or causes to be delivered, less property than the amount for which the person receives a certificate of receipt;

(5) Being authorized to make or deliver a document certifying receipt of property used, or to be used, by the Georgia Medicaid program and, intending to defraud the Georgia Medicaid program, makes or delivers the receipt without completely knowing that the information on the receipt is true;

(6) Knowingly buys, or receives as a pledge of an obligation or debt, public property from an officer or employee of the Georgia Medicaid program who lawfully may not sell or pledge the property; or

(7) Knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay, repay, or transmit money or property to the State of Georgia

shall be liable to the State of Georgia for a civil penalty of not less than \$5,500.00 and not more than \$11,000.00 for each false or fraudulent claim,

plus three times the amount of damages which the Georgia Medicaid program sustains because of the act of such person.

(b) The provisions of subsection (a) of this Code section notwithstanding, if the court finds that:

(1) The person committing the violation of this subsection furnished officials of the Georgia Medicaid program with all information known to such person about the violation within 30 days after the date on which the defendant first obtained the information;

(2) Such person fully cooperated with any government investigation of such violation; and

(3) At the time such person furnished the Georgia Medicaid program with the information about the violation, no criminal prosecution, civil action, or administrative action had commenced under this article with respect to such violation, and the person did not have actual knowledge of the existence of an investigation into such violation,

the court may assess not more than two times the amount of the actual damages which the Georgia Medicaid program sustained because of the act of such person.

(c) A person violating any provision of subsection (a) of this Code section shall also be liable to this state for all costs of any civil action brought to recover the damages and penalties provided under this article. (Code 1981, § 49-4-168.1, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (a).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, “subsection (a) of this Code section” was substituted for “this subsection” in subsection (c).

49-4-168.2. Role of Attorney General in pursuing cases; civil actions by private persons; special procedures for civil actions by private persons; limitation on participation by private person; stay of discovery; receipt of proceeds from civil judgment by private person and Indigent Care Trust Fund.

(a) The Attorney General shall be authorized to investigate suspected, alleged, and reported violations of this article. If the Attorney General finds that a person has violated or is violating this article, then the Attorney General may bring a civil action against such person under this article.

(b) Subject to the exclusions set forth in this Code section, a civil action under this article may also be brought by a private person. A civil action shall be brought in the name of the State of Georgia. The civil action may be dismissed only if the court and the Attorney General give written consent to the dismissal and state the reasons for consenting to such dismissal.

(c) Where a private person brings a civil action under this article, such person shall follow the following special procedures:

(1) A copy of the complaint and written disclosure of substantially all material evidence and information the person possesses shall be served on the Attorney General;

(2) The complaint shall be filed in camera, shall remain under seal for at least 60 days, and shall not be served on the defendant until the court so orders. The purpose of the period under seal shall be to allow the Attorney General to investigate the allegations of the complaint. The Attorney General may elect to intervene and proceed with the civil action within 60 days after it receives both the complaint and the material evidence and information;

(3) The Attorney General may, for good cause shown, move the court for extensions of the time during which the complaint remains under seal under paragraph (2) of this subsection. Any such motions may be supported by affidavits or other submissions in camera;

(4) Before the expiration of the 60 day period or any extensions obtained under paragraph (3) of this subsection, the Attorney General shall:

(A) Proceed with the civil action, in which case the civil action shall be conducted by the Attorney General; or

(B) Notify the court that it declines to take over the civil action, in which case the person bringing the civil action shall have the right to proceed with the civil action;

(5) The defendant shall not be required to respond to any complaint filed under this Code section until 30 days after the complaint is unsealed and served upon the defendant; and

(6) When a person brings a civil action under this subsection, no person other than the Attorney General may intervene or bring a related civil action based on the facts underlying the pending civil action.

(d)(1) If the Attorney General elects to intervene and proceed with the civil action, he or she shall have the primary responsibility for prosecuting the civil action and shall not be bound by an act of the person bringing such civil action. Such person shall have the right to continue as a party to the civil action, subject to the limitations set forth in this subsection.

(2) The Attorney General may dismiss the civil action, notwithstanding the objections of the person initiating the civil action, if the person has been notified by the Attorney General of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

(3) The Attorney General may settle the civil action with the defendant notwithstanding the objections of the person initiating the civil action if the court determines, after a hearing, that the proposed settlement is fair, adequate, and reasonable under all the circumstances. Upon a showing of good cause, such hearing may be held in camera.

(4) Upon a showing by the Attorney General that unrestricted participation during the course of the litigation by the person initiating the civil action would interfere with or unduly delay the Attorney General's litigation of the case, or would be repetitious, irrelevant, or for purposes of harassment, the court may, in its discretion, impose limitations on the person's participation, such as:

- (A) Limiting the number of witnesses the person may call;
- (B) Limiting the length of the testimony of such witnesses;
- (C) Limiting the person's cross-examination of witnesses; or
- (D) Otherwise limiting the participation by the person in the litigation.

(e) Upon a showing by the defendant that unrestricted participation during the course of the litigation by the person initiating the civil action would be for purposes of harassment or would cause the defendant undue burden or unnecessary expense, the court may limit the participation by the person in the litigation.

(f) If the Attorney General elects not to proceed with the civil action, the person who initiated the civil action shall have the right to conduct the civil action. If the Attorney General so requests, he or she shall be served with copies of all pleadings filed in the civil action and shall be supplied with copies of all deposition transcripts. When a person proceeds with the civil action, the court may nevertheless permit the Attorney General to intervene at a later date for any purpose, including, but not limited to, dismissal of the civil action notwithstanding the objections of the person initiating the civil action if such person has been notified by the Attorney General of the filing of such motion and the court has provided such person with an opportunity for a hearing on such motion.

(g) Whether or not the Attorney General proceeds with the civil action, upon a showing by the Attorney General that certain actions of discovery by the person initiating the civil action would interfere with the Attorney General's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60 day period upon a further showing in camera that the Attorney General has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the civil

action will interfere with the ongoing criminal or civil investigation or proceedings.

(h) Notwithstanding subsections (b) and (c) of this Code section, the Attorney General may elect to pursue this state's claim through any alternate remedy available to the Attorney General, including any administrative proceeding to determine a civil money penalty. If any such alternate remedy is pursued in another proceeding, the person initiating the civil action shall have the same rights in such proceeding as such person would have had if the civil action had continued under this Code section. Any finding of fact or conclusion of law made in such other proceeding that has become final shall be conclusive on all parties to a civil action under this Code section. For purposes of this subsection, a finding or conclusion is final if it has been finally determined on appeal to the appropriate court of the State of Georgia, if all time for filing such an appeal with respect to the finding or conclusion has expired, or if the finding or conclusion is not subject to judicial review.

(i)(1) If the Attorney General proceeds with a civil action brought by a private person under subsection (b) of this Code section, such person shall, subject to the second sentence of this paragraph, receive at least 15 percent but not more than 25 percent of the proceeds of the civil action or settlement of the claim, depending upon the extent to which the person substantially contributed to the prosecution of the civil action. Where the civil action is one which the court finds to be based primarily on disclosures of specific information, other than information provided by the person bringing the civil action, relating to allegations or transactions in a criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General hearing, audit, or investigation, or from the news media, the court may award such sums as it considers appropriate, but in no case more than 10 percent of the proceeds, taking into account the significance of the information and the role of the person bringing such civil action in advancing the case to litigation. Any payment to a person under the first or second sentence of this paragraph shall be made from the proceeds. The remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Any such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(2) If the Attorney General does not proceed with a civil action under this Code section, the person bringing the civil action or settling the claim shall receive an amount which the court decides is reasonable for collecting the civil penalty and damages. Such amount shall be not less than 25 percent and not more than 30 percent of the proceeds of the civil action or settlement and shall be paid out of such proceeds. The

remaining proceeds shall be payable to the Indigent Care Trust Fund to be used for the purposes set forth in Code Section 31-8-154. Such person shall also receive an amount for reasonable expenses which the court finds to have been necessarily incurred, plus reasonable attorney's fees and costs. All such expenses, fees, and costs shall be awarded against the defendant.

(3) Whether or not the Attorney General proceeds with the civil action, if the court finds that the civil action was brought by a person who planned and initiated the violation of Code Section 49-4-168.1 upon which the civil action was brought, then the court may, to the extent the court considers appropriate, reduce the share of the proceeds of the civil action which the person would otherwise receive under paragraph (1) or (2) of this subsection, taking into account the role of that person in advancing the case to litigation and any relevant circumstances pertaining to the violation. If the person bringing the civil action is convicted of criminal conduct arising from his or her role in the violation of Code Section 49-4-168.1, such person shall be dismissed from the civil action and shall not receive any share of the proceeds of the civil action. Such dismissal shall not prejudice the right of the State of Georgia to continue the civil action, represented by the Attorney General.

(4) If the Attorney General does not proceed with the civil action and the person bringing the civil action conducts the civil action, the court may award to the defendant its reasonable attorney's fees and expenses against the person bringing the civil action if the defendant prevails in the civil action and the court finds that the claim of the person bringing the civil action was clearly frivolous, clearly vexatious, or brought primarily for purposes of harassment.

(5) The State of Georgia shall not be liable for expenses which a private person incurs in bringing a civil action under this article.

(j) For purposes of this subsection, "public employee," "public official," and "public employment" shall include federal, state, and local employees and officials.

(1) No civil action may be brought under this article by a person who is or was a public employee or public official if the allegations of such action are substantially based upon:

(A) Allegations of wrongdoing or misconduct which such person had a duty or obligation to report or investigate within the scope of his or her public employment or office; or

(B) Information or records to which such person had access as a result of his or her public employment or office.

(2) No court shall have jurisdiction over a civil action under this article based upon the public disclosure of allegations or transactions in a

criminal, civil, or administrative hearing, in a legislative, administrative, or Attorney General report, hearing, audit, or investigation, or from the news media, unless the civil action is brought by the Attorney General or unless the person bringing the civil action is an original source of the information. For purposes of this paragraph, "original source" means an individual who has direct and independent knowledge of the information on which the allegations are based and has voluntarily provided the information to this state before filing a civil action under this Code section based on such information.

(3) In no event may a person bring a civil action under this article which is based upon allegations or transactions which are the subject of a civil or administrative proceeding to which the State of Georgia is already party.

(4) No civil action may be brought under this article with respect to any claim relating to the assessment, payment, nonpayment, refund or collection of taxes pursuant to any provisions of Title 48. (Code 1981, § 49-4-168.2, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in paragraph (d)(1).

49-4-168.3. Standard of proof; procedure.

(a) In any civil action brought under this article, the State of Georgia or person bringing the civil action shall be required to prove all essential elements of the cause of civil action, including damages, by a preponderance of the evidence.

(b) Except as otherwise provided in this article, all civil actions brought under this article shall be governed by the provisions of Chapter 11 of Title 9, the "Georgia Civil Practice Act." (Code 1981, § 49-4-168.3, enacted by Ga. L. 2007, p. 355, § 3/HB 551.)

49-4-168.4. Employee discrimination or harassment by employer while employee pursues civil action under State False Medicaid Claims Act.

Any employee who is discharged, demoted, suspended, threatened, harassed, or in any other manner discriminated against in the terms and conditions of employment by his or her employer because of lawful acts done by the employee, on behalf of the employee or others, in furtherance of a civil action under this article, including investigation for, initiation of, testimony for, or assistance in a civil action filed or to be filed under this article, shall be entitled to all relief necessary to make the employee whole. Such relief shall include reinstatement with the same seniority status such

employee would have had but for the discrimination, two times the amount of back pay, interest on the back pay award, and compensation for any special damages sustained as a result of the discrimination, including litigation costs and reasonable attorney's fees. An employee may bring a civil action in an appropriate court of the State of Georgia for the relief provided in this Code section. (Code 1981, § 49-4-168.4, enacted by Ga. L. 2007, p. 355, § 3/HB 551.)

49-4-168.5. Statute of limitations.

All civil actions under this article shall be filed pursuant to Code Section 49-4-168.2 within six years after the date the violation was committed, or three years after the date when facts material to the right of civil action are known or reasonably should have been known by the state official charged with the responsibility to act in the circumstances, whichever occurs last; provided, however, that in no event shall any civil action be filed more than ten years after the date upon which the violation was committed. (Code 1981, § 49-4-168.5, enacted by Ga. L. 2007, p. 355, § 3/HB 551.)

49-4-168.6. Venue.

All civil actions brought against natural persons under this article shall be brought in the county where the defendant or, in the case of multiple defendants or of defendants who are not residents of the State of Georgia, in any county where any one defendant resides, can be found, transacts business, or commits an act in furtherance of the submittal of a false or fraudulent claim to the Georgia Medicaid program. (Code 1981, § 49-4-168.6, enacted by Ga. L. 2007, p. 355, § 3/HB 551; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section.

ARTICLE 7C

THERAPY SERVICES FOR CHILDREN WITH DISABILITIES

Effective date. — This article became effective May 14, 2008.

49-4-169. Legislative findings and intent.

The General Assembly finds that changes in the approval process of certain health care programs have made it difficult for children with disabilities who are eligible for medical assistance pursuant to Article 7 of this chapter to receive the services to which they are entitled with the frequency and within the time periods which are appropriate. Separate administration of the categorically needy and the medically fragile pro-

grams should not result in any variation in the amount, duration, and scope of services. Redundant paperwork requirements have hampered service approvals and delivery and reduced the number of providers serving children. It is the intent of this article to ensure that children with disabilities receive the medically necessary therapy services to which they are entitled under the Medicaid Early Periodic Screening, Diagnostic, and Treatment Program and that categorically needy and medically fragile children have available to them the same scope, duration, and amount of services. It is also the intent of this article to simplify the process and paperwork by which occupational, speech, and physical therapy services are applied for and received by eligible recipients. (Code 1981, § 49-4-169, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.1. Definitions.

As used in this article, the term:

(1) "Correct or ameliorate" means to improve or maintain a child's health in the best condition possible, compensate for a health problem, prevent it from worsening, prevent the development of additional health problems, or improve or maintain a child's overall health, even if treatment or services will not cure the recipient's overall health.

(2) "Department" means the Department of Community Health.

(3) "EPSDT Program" means the federal Medicaid Early Periodic Screening, Diagnostic, and Treatment Program contained at 42 U.S.C.A. Sections 1396a and 1396d.

(4) "Medically necessary services" means services or treatments that are prescribed by a physician or other licensed practitioner, and which, pursuant to the EPSDT Program, diagnose or correct or ameliorate defects, physical and mental illnesses, and health conditions, whether or not such services are in the state plan.

(5) "Therapy services" means occupational therapy, speech therapy, physical therapy, or other services provided pursuant to the EPSDT Program to an eligible Medicaid beneficiary 21 years of age or younger and which are recommended as medically necessary by a physician. (Code 1981, § 49-4-169.1, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.2. Services and treatment for categorically needy and medically fragile children.

All persons who are 21 years of age or younger who are eligible for services under the EPSDT Program shall receive therapy services in accordance with the provisions of this article, whether they are categorically needy children enrolled in the low income Medicaid program or medically

fragile children enrolled in the aged, blind, and disabled Medicaid program. (Code 1981, § 49-4-169.2, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

49-4-169.3. Requirements relating to administrative prior approval for services and appeals; statutory construction.

(a) The department shall develop and implement for itself, the care management organizations with which it enters into contracts, and its utilization review vendors consistent requirements, paperwork, and procedures for utilization review and prior approval of physical, occupational, or speech language pathologist services prescribed for children. Prior approval for therapy services shall be for a period of up to six months as consistent with the needs of the individual recipient.

(b) The department, its utilization review vendors, or the care management organizations with which it contracts shall give notice to affected Medicaid recipients of the following information in cases where prior approval is denied:

(1) The medical procedure or service for which such entity is refusing to grant prior approval;

(2) Any additional information needed from the recipient's medical provider which could change the decision of such entity; and

(3) The specific reason used by the entity to determine that the procedure is not medically necessary to the Medicaid recipient, including facts pertinent to the individual case.

(c) Notwithstanding any other provision of law, the department, its utilization review vendors, or its care management organizations shall grant prior approval for requests for therapy services when the recipient is eligible for Medicaid services and the services prescribed are medically necessary.

(d) In cases where prior approval is required under this article, it shall be decided with reasonable promptness, not to exceed 15 business days, and may not be denied until it has been evaluated under the EPSDT Program.

(e) Prescriptions and prior approval for services shall be for general areas of treatment, treatment goals, or ranges of specific treatments or processing codes. Clinical coverage criteria or guidelines, including restrictions such as location of service and prohibitions on multiple services on the same day or at the same time, shall not be the sole determinant used by the department, its utilization vendors, or its care management organizations to limit the EPSDT standards or its medically necessary definition in this article. Any such restrictions shall be waived under the EPSDT Program or this article if the prescribed services are medically necessary.

(f) Nothing in this article shall be construed to prohibit the department, its utilization review vendors, or its care management organizations from

performing utilization reviews of the diagnosis or treatment of a child receiving therapy services pursuant to the EPSDT Program, the amount, duration, or scope or the actual performance or delivery of such services by providers, so long as such utilization review does not unreasonably deny or unreasonably delay the provision of medically necessary services to the recipient.

(g) Nothing in this article shall be deemed to prohibit or restrict the department, its utilization review vendors, or its care management organizations from denying claims or prosecuting or pursuing beneficiaries or providers who submit false or fraudulent prescriptions, forms required to implement this article, or claims for services or whose eligibility as a beneficiary or a participating provider has been based on intentionally false information. (Code 1981, § 49-4-169.3, enacted by Ga. L. 2008, p. 743, § 1/SB 507.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a comma was inserted following “physical” in the first sentence of subsection (a).

ARTICLE 8

PERSONAL REPRESENTATIVE TO MANAGE ASSISTANCE PAYMENTS

49-4-170. Grounds for appointing personal representative; petition by county or district director.

When any otherwise qualified applicant for or recipient of assistance under this chapter or payee, in the case of temporary assistance for needy families, is or shall become unable to manage the assistance payments or otherwise fails so to manage, to the extent that deprivation or hazard to himself or others results, or when, in the case of temporary assistance for needy families, the payment is not being used for the benefit of the children, a petition may be filed by the county or district director of family and children services before the probate court of the county in which the applicant resides or the county in which the recipient receives his check, in the form of a verified written application for the appointment of a personal representative for the purpose of receiving and managing public assistance payments for any such recipient or payee, which application shall allege one or more of the above grounds for the legal appointment of such personal representative. (Ga. L. 1964, p. 200, § 1; Ga. L. 1997, p. 1021, § 7.)

Editor’s notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

49-4-171. Hearing on petition; appointment, duties, and removal of representative; court costs waived.

The court shall summarily order a hearing on the petition and shall cause the applicant or recipient to be served personally with a copy of the petition and order at least five days in advance of the time and place for the hearing. Findings of fact shall be made by the court without a jury; and if the court shall find that the applicant for or recipient of assistance under this chapter or the payee, in the case of temporary assistance for needy families, is unable to manage the assistance payments or otherwise fails so to manage to the extent that deprivation or hazard to himself or others results or, in the case of temporary assistance for needy families, the payment is not being used for the benefit of the children, the court may thereupon enter an order embracing such findings and appointing some responsible person as a personal representative of the applicant or recipient or of the payee, in the case of temporary assistance for needy families, for the purposes set forth in this article; provided, however, that no employee of the Department of Human Services shall be eligible to hold such appointment. The personal representative so appointed shall serve without bond and without compensation. He will be responsible for receiving the monthly assistance payment and using the proceeds of such payment for the benefit of the recipient of assistance under this chapter or, in the case of temporary assistance for needy families, for the application of the payment to the best interest of the children. Such personal representative shall be responsible to the court for the faithful discharge of the duties of his trust. The court may consider the recommendation of the county director of family and children services in the selection of a suitable person for appointment as personal representative for the limited purposes of this Code section. The personal representative so appointed may be removed by the court and the proceedings dismissed or another suitable personal representative appointed. All costs of court with respect to any such proceeding shall be waived. (Ga. L. 1964, p. 200, § 2; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” near the end of the second sentence of this Code section.

Editor’s notes. — Ga. L. 1997, p. 1021,

§ 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

49-4-172. Appeal from order of appointment or removal.

Except as otherwise provided in Article 6 of Chapter 9 of Title 15, from the order of the court appointing or removing such personal representative, an appeal may be had to the judge of the superior court, who shall hear

the matter de novo without a jury. (Ga. L. 1964, p. 200, § 3; Ga. L. 1986, p. 982, § 17.)

Editor's notes. — Ga. L. 1986, p. 982, provided that that Act would apply to all § 25, not codified by the General Assembly, cases filed on or after July 1, 1986.

49-4-173. Maintenance of records by county or district director; use of facts and findings in other proceedings.

The court may, for the purposes of this Code section, direct the county or district director of family and children services to maintain records pertaining to all aspects of any personal representative proceedings, which records the court may adopt as the court's record and in lieu of maintenance of separate records by the court. The facts arrived at by the county or district director pursuant to this Code section and the findings of the court pursuant to this Code section shall not be competent as evidence in other proceedings dealing with any subject matter other than as provided in this article. (Ga. L. 1964, p. 200, § 4.)

ARTICLE 9

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

Law reviews. — For article commenting on the enactment of this article, see 14 Georgia St. U.L. Rev. 284 (1997).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 8, 10, 73 et seq.

C.J.S. — 81 C.J.S., Social Security, § 183 et seq., § 206.

49-4-180. Short title.

This article shall be known and may be cited as the "Temporary Assistance for Needy Families Act." (Code 1981, § 49-4-180, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-181. Definitions.

As used in this article, the term:

(1) "Applicant" means a person who applies for assistance under the state plan.

(2) "Assistance" means the temporary assistance provided to needy families with children in accordance with Part A of Title IV of the federal Social Security Act, as amended, regulations promulgated pursuant thereto by the secretary of health and human services, all applicable laws

of this state, the state plan, and regulations of the Board of Human Services.

(3) "Board" means the Board of Human Services.

(4) "Cash assistance" means the money payment component of TANF assistance.

(5) "Department" means the Department of Human Services.

(6) "Family" means one or more children living with a responsible parent, both parents, or other caretaker relative or legal guardian.

(7) "Recipient" means a person who receives assistance pursuant to the state plan.

(8) "State plan" means the plan submitted by the State of Georgia to the secretary of health and human services, pursuant to Part A of Title IV of the federal Social Security Act, as amended, particularly by the Act of August 22, 1996, Public Law 104-193, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended.

(9) "TANF" means temporary assistance for needy families.

(10) "Work activity" means a work activity as defined by Part A of Title IV of the federal Social Security Act, as amended. The term currently includes any of the following:

(A) Unsubsidized employment;

(B) Subsidized private sector employment;

(C) Subsidized public sector employment;

(D) Work experience, including work associated with the refurbishing of publicly assisted housing, if sufficient private sector employment is not available;

(E) On-the-job training;

(F) Job search and job readiness assistance, but such activity by a recipient shall be limited to no more than six weeks, only four weeks of which may be consecutive, unless the state's unemployment rate is 50 percent above the national average, in which case such activity shall be limited to no more than 12 weeks, only four weeks of which may be consecutive;

(G) Community service programs;

(H) Vocational educational training, not to exceed 12 months with respect to any individual;

(I) Job skills training directly related to employment;

(J) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a certificate of high school equivalency;

(K) Satisfactory attendance at secondary school or in a course of study leading to a certificate of general equivalence, in the case of a recipient who has not completed secondary school or received such a certificate of high school equivalency; and

(L) The provision of child care services to an individual who is participating in a community service program.

In the event the definition of work activities in Part A of Title IV of the federal Social Security Act is amended to delete from or add to the list of activities contained in this paragraph, any such change or changes shall be incorporated into this paragraph. The minimum average number of hours per week of such work activity for not less than the percentage of recipients comprising the minimum work participation rate in a given federal fiscal year shall be as follows:

If the month is in federal fiscal year	The minimum average number of hours per week is:
1997	20
1998	20
1999	25
2000 or thereafter	30

(11) "Work participation rate" means the percentage of TANF recipients who are required to engage in a work activity in accordance with Part A of Title IV of the federal Social Security Act, as amended. The minimum work participation rate with respect to all families receiving assistance under the Georgia TANF Program shall be, in accordance with current federal law, as follows:

If the federal fiscal year is:	The minimum participation rate is:
1997	25%
1998	30%
1999	35%
2000	40%

2001	45%
2002 or thereafter	50%

The minimum work participation rate with respect to two-parent families receiving assistance under the Georgia TANF Program shall be, in accordance with current federal law, as follows:

	The minimum
If the federal	participation
fiscal year is:	rate is:
1997	75%
1998	75%
1999 or thereafter	90%

Provided, however, that the work participation rates reflected in this paragraph may be adjusted due to caseload reductions in accordance with Part A of Title IV of the federal Social Security Act, as amended. (Code 1981, § 49-4-181, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in paragraphs (2) and (3), and substituted “Department of Human Services” for “Department of Human Resources” in paragraph (5).

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

49-4-182. Temporary Assistance for Needy Families Program created.

- (a) There is created the Georgia Temporary Assistance for Needy Families Program, which shall be known as the “Georgia TANF Program.” The purpose of such program is to provide necessary assistance to needy families with children on a temporary basis and to provide parents, legal guardians, or other caretaker relatives of children with the necessary support services to enable such parents, legal guardians, or caretaker relatives to become self-sufficient and leave the program as soon as possible. After an initial assessment and once the state determines an applicant is ready for work, applicants for assistance shall be required to engage in a work activity in accordance with Part A of Title IV of the federal Social Security Act, as amended, and the state plan as soon as possible after making application for assistance, but in any event no later than 24 months after first receiving cash assistance.
- (b) Assistance shall be provided in accordance with the state plan and any future amendments thereto. Cash assistance to a recipient who is not a minor child and who is a head of a household or married to the head of a

household shall be limited to a lifetime maximum of 48 months, whether or not consecutive, beginning January 1, 1997.

(c) Nothing in this article, the state plan, or any rules or regulations adopted pursuant to this article shall be interpreted to entitle any individual or any family to assistance under the Georgia TANF Program. (Code 1981, § 49-4-182, enacted by Ga. L. 1997, p. 1021, § 6.)

U.S. Code. — Part A of Title IV of the subsection (a) of this Code section, is codified federal Social Security Act, referred to in § 601 et seq.

49-4-183. Administration of article by department; promulgation of rules and regulations by board; duties of department.

(a) This article shall be administered by the Department of Human Services. The Board of Human Services shall issue such rules and regulations as may be necessary to administer this article properly and to comply with the requirements of Part A of Title IV of the federal Social Security Act, as amended, the state plan, and any future amendments to such Act or plan. The initial rules and regulations for the Georgia TANF Program shall be promulgated by the board pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and specifically Code Section 50-13-4 no later than July 1, 1997.

(b) The board shall ensure that such rules and regulations provide for:

(1) Methods of administration necessary for the proper and efficient operation of the state plan for implementation of this article;

(2) Reasonable standards for determining eligibility and the extent of assistance available for recipients;

(3) Consideration of the income and resources of an applicant for assistance in determining eligibility;

(4) Personal responsibility obligations and work activity requirements consistent with Part A of Title IV of the federal Social Security Act, as amended, and the state plan, provided that programs included in the personal responsibility obligations established by the board shall include counseling on abstinence until marriage;

(5) Criteria which make an applicant ineligible to receive benefits under the Georgia TANF Program, including but not limited to those specified in Code Section 49-4-184;

(6) Specific conduct which would authorize the reduction or termination of assistance to a recipient, including but not limited to that specified in Code Section 49-4-185;

(7) Standards whereby certain obligations, requirements, and criteria will be waived for specific applicants or recipients based on hardship;

(8) An administrative hearing process with hearings to be conducted by the Office of State Administrative Hearings in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” and subsection (b) of Code Section 49-4-13;

(9) Safeguards which restrict the use and disclosure of information concerning applicants for and recipients of assistance under this article and in accordance with Code Section 49-4-14 and Part A of Title IV of the federal Social Security Act, as amended;

(10) Immunizations for specified diseases for preschool age children as a condition of assistance being provided for such children, and the schedule of and standards for administering such immunizations, including the presentation of a certificate of immunization, unless:

(A) There is appropriate evidence from the local health department or a physician that an immunization sequence has been started and can be completed within a period of up to 180 days, in which case a waiver of the immunization requirement for up to 180 days shall be granted;

(B) After examination by the local board of health or a physician, any preschool age child is found to have a physical disability which may make vaccination undesirable, in which case a certificate to that effect issued by the local board of health or the physician may be accepted in lieu of a certificate of immunization and shall exempt the child from obtaining a certificate of immunization until the disability is relieved;

(C) The parent or legal guardian furnishes an affidavit swearing or affirming that the immunization conflicts with the religious beliefs of the parent or legal guardian; or

(D) The implementation of such an immunization requirement violates any federal law or regulations or would result in the loss of any federal funds to this state; and

(11) The establishment and maintenance of individual development accounts. The funds in such accounts may be used for postsecondary educational expenses, the purchase of a first home, or business capitalization. The funds in such accounts shall not be considered in determining eligibility for cash assistance pursuant to 42 U.S.C. Section 604(h).

(c) The department shall:

(1) Supervise the administration of assistance pursuant to the Georgia TANF Program by the division of family and children services;

(2) Prescribe necessary forms and procedures to carry out the Georgia TANF Program, subject to the rules and regulations prescribed by the board pursuant to this article;

(3) Publish an annual report and such interim reports as may be necessary. The annual report and such interim reports shall be provided

to the Governor and members of the General Assembly. The department shall not be required to distribute copies of the annual report or the interim reports to the members of the General Assembly but shall notify the members of the availability of the reports in the manner which it deems to be most effective and efficient. The annual report and interim reports shall contain the following:

- (A) The total TANF caseload count;
- (B) Quarterly and annual TANF reports, in full, prepared for submission to the federal government;
- (C) The percentage of the TANF caseload and the number of individuals given a hardship exemption from the lifetime limit on cash assistance and a categorization of the reasons for such exemptions;
- (D) The number of individuals who received transportation assistance and the cost of such assistance;
- (E) The number of individuals who received diversionary assistance in order to prevent their requiring TANF assistance and the categories and cost of such diversionary assistance, and job acceptance and retention statistics;
- (F) The number of individuals denied assistance due to a serious violent felony conviction;
- (G) The number of mothers under 19 years of age who received assistance and their percentage of the total TANF caseload;
- (H) The number of children receiving subsidized child care and the total and average per recipient cost of child care provided to TANF recipients;
- (I) Data on teen pregnancy prevention;
- (J) The number of families sanctioned;
- (K) The number of legal immigrants receiving TANF benefits by category of immigration status;
- (L) The number of families no longer eligible because of time limits;
- (M) Follow-up information on job retention and earnings; and
- (N) An evaluation of the effect of Code Section 49-4-186 on the number of births to TANF recipient families.

The information required under this paragraph shall be provided on a county-by-county basis where feasible; and

- (4) Develop a plan, on or before January 1, 1998, to provide incentives for employers to hire those TANF recipients who have difficulty in finding

employment. (Code 1981, § 49-4-183, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49; Ga. L. 2005, p. 1036, § 39/SB 49; Ga. L. 2009, p. 453, §§ 2-2, 2-3/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), substituted “Department of Human Services” for “Department of Human Resources” in the first sentence, and substituted “Board of Human Services” for “Board of Human Resources” in the second sentence.

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

JUDICIAL DECISIONS

Right to object to immunization on religious grounds not found. — Right to lodge religious objection to a child’s immunization pursuant to O.C.G.A. §§ 31-12-3(b), 20-2-771(e), or 49-4-183(b)(10)(C) was not a residual right of the child’s parents under

O.C.G.A. § 15-11-13; thus, the mother of a child found to be deprived could not object to the immunization of the child on religious grounds. *In re C.R.*, 257 Ga. App. 159, 570 S.E.2d 609 (2002).

49-4-184. Eligibility for assistance.

(a) An applicant is not eligible for assistance under this article and a recipient shall no longer be eligible for assistance under this article if:

(1) The applicant’s or recipient’s family does not include a minor child;

(2) The applicant or recipient does not cooperate with the department in establishing paternity, in providing assistance in a fraud and abuse investigation, or in establishing, modifying, or enforcing a support order with respect to a child of the applicant or recipient, and the applicant or recipient does not qualify for any good cause exception which may be established by the board;

(3) The applicant or recipient fails to assign to the department any rights that applicant or recipient may have to support from any other person, not exceeding the total amount of assistance so provided to the family which accrues or has accrued before the date the recipient family leaves the program, in accordance with the provisions of Part A of Title IV of the federal Social Security Act, as amended;

(4) The applicant or recipient is convicted of a serious violent felony as defined in subsection (a) of Code Section 17-10-6.1 on or after January 1, 1997;

(5) The applicant or recipient is convicted of any felony under Article 2 of Chapter 13 of Title 16, the “Georgia Controlled Substances Act,” on or after January 1, 1997;

(6) The applicant or recipient is under 18 years of age, is not married, has a minor child at least 12 weeks of age in his or her care, and has not completed a high school education or its equivalent, unless the applicant or recipient participates and obtains passing grades in:

(A) Educational activities directed toward the attainment of a high school diploma or its equivalent; or

(B) An alternative educational or training program that has been approved by the department;

(7) The applicant or recipient is under 18 years of age, has never married, and is either pregnant or has a minor child in his or her care, unless:

(A) The applicant or recipient and the child or children live in a place of residence maintained by the applicant's or recipient's parent, legal guardian, or other adult relative of the applicant or recipient as such parent's, legal guardian's, or other adult relative's own home; or

(B) The applicant or recipient lives in a foster home, maternity home, or other supportive living arrangement supervised by an adult;

(8) The applicant or recipient is fleeing to avoid prosecution or custody or confinement after conviction of a felony under the laws of the place from which the applicant or recipient is a fugitive;

(9) The applicant or recipient violates a condition of probation or parole imposed under state or federal law; or

(10) The recipient is pregnant and fails to participate actively in prenatal care arranged by the department at a level defined by the department.

(b) Paragraphs (6) and (7) of subsection (a) of this Code section shall not apply if the applicant or recipient has no parent or legal guardian whose whereabouts are known, no parent or legal guardian of the applicant or recipient allows the applicant or recipient to live in the home of that parent or legal guardian, or the department otherwise determines that there is good cause not to apply the prohibitions contained in said paragraphs. (Code 1981, § 49-4-184, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 128, § 49.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in paragraph (a)(3) of this Code section, is codified at 42 U.S.C. § 601 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 56 et seq.

49-4-185. Sanctions against recipient for failure to comply.

(a) As used in this Code section, the term “sanction” means a 25 percent reduction of any cash assistance provided to a family for a time period established by the board for the first material violation and termination of any cash assistance provided to the family for any subsequent material violation within a time period established by the board; provided, however, that the department determine that there is good cause not to apply such a sanction in specific circumstances.

(b) A recipient shall be subject to sanction for failing to comply with the state plan if the recipient:

(1) Fails to report that a child is absent from home for a period of 45 consecutive days or, in the case of a child who is a recipient, being absent from home for a period of 45 consecutive days; provided, however, that a child who is a recipient shall not be sanctioned if the department determines there is good cause not to sanction the child under such circumstances;

(2) Violates any personal responsibility or work participation requirement; provided, however, that a single custodial parent with a child under 12 months of age may be exempt from any work participation requirement until adequate child care is available; or

(3) Except for violations of subsection (a) of Code Section 49-4-184 which result in the recipient no longer being eligible for assistance, violates any other term or condition specified in the federal Social Security Act, as amended, the state plan, or the rules and regulations of the board. (Code 1981, § 49-4-185, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 2000, p. 1137, § 8.)

U.S. Code. — The federal Social Security Code section, is codified at 42 U.S.C. § 301 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 79 et seq.

49-4-186. Schedule of assistance to eliminate increment in benefits under TANF program as result of child birth during eligibility period.

The schedule of assistance to be paid to a recipient family under this article shall eliminate the increment in benefits under the Georgia TANF Program as a result of the birth of a child during the period in which the family is eligible for TANF assistance or during a temporary period in which the family or recipient is ineligible for TANF assistance pursuant to a sanction imposed for failure to comply with eligibility requirements,

subsequent to which the family or recipient is again eligible for assistance. The recipient family in which the recipient parent gives birth to an additional child during the recipient's period of eligibility for TANF assistance, or during a temporary period of ineligibility for assistance, may not receive additional assistance, except in the case of a general increase in the amount of TANF assistance which is provided to all program recipients. This provision shall only apply to recipient families who have been in receipt of cash assistance under this article for a total of ten months after May 1, 1997. Nothing in this Code section shall be considered to disqualify a recipient family from an incremental increase in assistance in cases in which the birth of a child is the result of a verifiable rape or incest. (Code 1981, § 49-4-186, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-187. Assistance for applicants moving into state after receiving assistance from another state.

An applicant who moves into this state after receiving assistance from another state under Part A of Title IV of the federal Social Security Act, as amended, if otherwise eligible to receive assistance under the Georgia TANF Program, shall receive the same level of assistance for the same period of time under the same requirements and restrictions as a resident of this state; provided, however, that for a period not to exceed 12 months, such applicant shall receive the same amount of cash assistance as that applicant received in his or her previous state of residence, if such amount is lower than the amount of cash assistance paid to a comparable family unit in this state; provided, further, that an applicant who moves into this state shall be eligible to receive cash assistance for the same time period for which he or she would have been eligible in his or her previous state of residence, if such time period is shorter than the maximum time period permitted for receipt of assistance in this state. (Code 1981, § 49-4-187, enacted by Ga. L. 1997, p. 1021, § 6.)

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

49-4-188. Assistance for qualified aliens.

(a) As used in this Code section, the term “qualified alien” means a qualified alien as defined in Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, as amended, Public Law 104-193.

(b) Qualified aliens will be eligible for assistance under the Georgia TANF Program upon meeting the same qualifications and conditions as other applicants. (Code 1981, § 49-4-188, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 1998, p. 850, § 1; Ga. L. 1999, p. 845, § 1; Ga. L. 2001, p. 790, § 1.)

U.S. Code. — Section 431 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, referred to in subsection (a) of this Code section, is codified at 8 U.S.C. § 1641.

Law reviews. — For review of 1998 legislation relating to social services, see 15 Ga. St. U.L. Rev. 232 (1998).

49-4-189. [Reserved].

Reserved.

Editor's notes. — This Code section was reserved by Ga. L. 1997, p. 1021, § 6, effective April 22, 1997.

49-4-190. Construction of article.

It is the intention of the General Assembly that this article be construed consistently with Part A of Title IV of the federal Social Security Act, as amended, and so as to authorize the Department of Human Services, within the appropriations provided to it, to administer the state plan in a manner so as to receive the maximum amount of the federal block grant available for expenditures made under the state plan. Nothing in this article shall be construed to impose requirements which conflict with such federal law or regulations promulgated thereunder so as to result in a loss of federal funding to this state under that law. (Code 1981, § 49-4-190, enacted by Ga. L. 1997, p. 1021, § 6; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the first sentence of this Code section.

U.S. Code. — Part A of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. § 601 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 8, 10.

49-4-191. Establishment and enforcement of standards and procedures by department.

The department shall establish and enforce standards and procedures to:

(1) Screen and identify recipients of TANF assistance with a history of being victims of domestic violence, while protecting the confidentiality of any such recipients;

(2) Refer any such recipients to counseling and supportive services; and

(3) Waive, pursuant to a determination of good cause, other program requirements for any such recipients of TANF assistance, such as time

limits, for so long as necessary, residency requirements, child support cooperation requirements, and family cap provisions, in cases where compliance with such requirements would make it more difficult for individuals receiving TANF assistance to escape domestic violence or unfairly penalize such recipients who are or have been victimized by such violence, or individuals who are at risk of further domestic violence. (Code 1981, § 49-4-191, enacted by Ga. L. 1997, p. 1021, § 6.)

49-4-192. Establishment of pilot LEARNFARE program.

(a) As used in this Code section, the term:

(1) "Program" means the LEARNFARE program established in this Code section.

(2) "Teen-ager" means a person at least 13 years of age but not more than 16 years of age who is included in a grant of TANF assistance, who is residing with a parent or guardian, and who has not graduated from high school or received a certificate of high school equivalency (GED).

(b) The purpose of this Code section is to establish a pilot LEARNFARE program that requires school attendance of all teen-agers.

(c) The department shall establish in not less than ten counties in this state a pilot LEARNFARE program. Such program shall require school attendance of all teen-agers.

(d) A teen-ager who is required to attend school to meet LEARNFARE participation requirements under this Code section shall comply except when there is good cause shown, as defined by the department.

(e) Upon determination that a teen-ager has failed without good cause to attend school as required, the teen-ager will be removed from the TANF grant for the next possible payment month.

(f) A sanction applied under this program shall be effective for one month for each month that the teen-ager failed to meet the monthly attendance requirement, as established by the department. In the case of a teen-ager who drops out of school, the sanction shall remain in force until the teen-ager provides written proof from the school system that the teen-ager has re-enrolled and has met the monthly attendance requirement for one calendar month.

(g) The department shall adopt not later than July 1, 1997, such rules and regulations as may be necessary to implement this program. The department shall establish by appropriate rules and regulations the eligibility and participation guidelines for such program.

(h) The department shall further provide, no later than January 1, 1999, a written report to the General Assembly which shall describe all actions taken to implement this program and the results and findings derived therefrom. (Code 1981, § 49-4-192, enacted by Ga. L. 1997, p. 1021, § 7.1.)

CHAPTER 4A

DEPARTMENT OF JUVENILE JUSTICE

Sec.		Sec.	
49-4A-1.	Definitions.		return of mentally ill or retarded children; escapees; discharge; evidence of commitment; records; restitution.
49-4A-2.	Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; duties.	49-4A-9.	Sentence of youthful offenders; modification of order; review; participation in programs.
49-4A-3.	Department of Juvenile Justice created; commissioner of juvenile justice; organization and operation of department.	49-4A-10.	Escape from youth detention center; petition; commitment.
49-4A-4.	Purpose of chapter; detention care facilities.	49-4A-11.	Aiding or encouraging child to escape; hindering apprehension of child; provision of contraband to child; possession of contraband by child; penalties.
49-4A-5.	Transfer of functions and employees of Division of Youth Services; personnel administration.	49-4A-12.	Special school district.
49-4A-6.	Rules and regulations.	49-4A-13.	Family attention home; assessment of risk and plan of care.
49-4A-7.	Powers and duties of department.	49-4A-14.	Compensation for damage to apparel by youth under custody.
49-4A-8.	Commitment of delinquent or unruly children; procedure; cost;		

Administrative rules and regulations. — Rules of general applicability, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-1.

Administrative revocations of juvenile community placement, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-2.

49-4A-1. Definitions.

As used in this chapter, the term:

- (1) "Board" means the Board of Juvenile Justice.
- (2) "Commissioner" means the commissioner of juvenile justice.
- (3) "Delinquent or unruly child or youth" means any person so adjudged under Article 1 of Chapter 11 of Title 15.
- (4) "Department" means the Department of Juvenile Justice. (Code 1981, § 49-4A-1, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, the defined terms were alphabetized by redesignating

former paragraph (4) as present paragraph (2) and former paragraphs (2) and (3) as present paragraphs (3) and (4), respectively.

49-4A-2. Board of Juvenile Justice created; appointments; terms; vacancies; chairperson; per diem and expenses; duties.

(a)(1) There is created a Board of Juvenile Justice which shall establish the general policy to be followed by the Department of Juvenile Justice created in this chapter. The Board of Juvenile Justice shall be the successor entity to the Board of Children and Youth Services and the change is intended to be one of name only. The board shall consist of 15 members, with at least one but not more than two from each congressional district in the state, appointed by the Governor and confirmed by the Senate. The Governor shall make such appointments with a view toward achieving minority representation, representation of women, and equitable geographic representation on the board.

(2) The Governor shall designate the initial terms of the members of the board as follows: three members shall be appointed for one year; three members shall be appointed for two years; three members shall be appointed for three years; three members shall be appointed for four years; and three members shall be appointed for five years. Thereafter, all succeeding appointments shall be for five-year terms from the expiration of the previous term.

(3) Vacancies in office shall be filled by appointment by the Governor in the same manner as the appointment to the position on the board which becomes vacant, and the appointment shall be submitted to the Senate for confirmation at the next session of the General Assembly. An appointment to fill a vacancy, other than by expiration of a term of office, shall be for the balance of the unexpired term.

(4) There shall be a chairperson of the board, elected by and from the membership of the board, who shall be the presiding officer of the board.

(5) The members of the board shall receive per diem and expenses as shall be set and approved by the Office of Planning and Budget and in conformance with rates and allowances set for members of other state boards.

(b) The board shall provide leadership in developing programs to successfully rehabilitate juvenile delinquents and unruly children committed to the state's custody and to provide technical assistance to private and public entities for prevention programs for children at risk.

(c) The board shall perform duties required of it by this chapter and shall, in addition thereto, be responsible for promulgation of all rules and regulations not in conflict with this chapter that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this chapter, and to the performance of the duties and functions of the department as set forth in this chapter.

(d) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this chapter and to restore and build up the self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Code 1981, § 49-4A-2, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 5.)

Code Commission notes. — As enacted by Ga. L. 1992, p. 1983, § 24, this Code section did not contain a subsection (b). Pursuant to Code Section 28-9-5, in 1992, subsections

(c), (d), and (e) were redesignated as present subsections (b), (c), and (d), respectively.

49-4A-3. Department of Juvenile Justice created; commissioner of juvenile justice; organization and operation of department.

(a) There is created the Department of Juvenile Justice and the position of commissioner of juvenile justice. The Department of Juvenile Justice shall be the successor entity to the Department of Children and Youth Services and the change is intended to be one of name only; and the commissioner of juvenile justice shall be the successor to the commissioner of children and youth services and the change is intended to be one of name only. The commissioner shall be the chief administrative officer of the Department of Juvenile Justice and shall be both appointed and removed by the board, subject to the approval of the Governor. The commissioner of human services may not also serve as the commissioner of juvenile justice. Subject to the general policy and rules and regulations of the board, the commissioner of juvenile justice shall supervise, direct, account for, organize, plan, administer, and execute the functions of the Department of Juvenile Justice.

(b) The department shall provide for supervision, detention, and rehabilitation of juvenile delinquents committed to the state's custody. The department shall also be authorized to operate prevention programs and to provide assistance to local public and private entities with prevention programs for juveniles at risk. Additionally, the department will be authorized to provide for specialized treatment for juvenile offenders, in lieu of commitment, who have been found to be sex offenders or drug abusers and who may have behavior disorders. The department's organization, operation, and implementation shall be based on the following:

(1) Development of a comprehensive continuum of service options through flexible funding to allow providers to respond to the unique needs and capabilities of individual children and families;

(2) Services implemented so that each child and family served can have a personal relationship with staff, providers, and workers, which staff, providers, and workers shall be trained and treated as professionals, have a range of multidisciplinary skills, and have manageable caseloads;

(3) Services shall be community centered and responsive to local needs with state and local and public and private entities forming cooperative partnerships that enhance informal support systems for families;

(4) Systems that are accountable, with desired outcomes specified, results measured and evaluated, and cost-efficient options maximized;

(5) Intersystem communication and collaboration that are encouraged and facilitated through coordination of systems so that gaps and unnecessary duplications in planning, funding, and providing services are eliminated;

(6) The department shall be consumer driven and responsive to the changing needs of individual communities; and

(7) The department shall encourage the central location of various services whenever possible. (Code 1981, § 49-4A-3, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 6; Ga. L. 2009, p. 453, § 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human re-

sources” in the next-to-last sentence of subsection (a).

49-4A-4. Purpose of chapter; detention care facilities.

It is the purpose of this chapter to establish the department as the agency to administer, supervise, and manage juvenile detention facilities. Except for the purposes of administration, supervision, and management as provided in this chapter, juvenile detention facilities shall continue to be detention care facilities for delinquent and unruly children and youth for the purposes of Article 1 of Chapter 11 of Title 15, relating to juvenile courts and juvenile proceedings. (Code 1981, § 49-4A-4, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 7.)

49-4A-5. Transfer of functions and employees of Division of Youth Services; personnel administration.

(a) The department shall carry out all functions and exercise all powers relating to the administration, supervision, and management of juvenile detention facilities, including youth development centers, and jurisdiction over said youth development centers and other juvenile detention facilities is vested in the department.

(b) Any employees of the Department of Juvenile Justice who became so employed by virtue of their transfer from the Division of Youth Services of the Department of Human Resources (now known as the Department of Human Services) on June 30, 1992, shall retain their compensation and benefits and such may not be reduced. Transferred employees who were subject to the State Personnel Administration shall retain all existing rights under the State Personnel Administration. Retirement rights of such transferred employees existing under the Employees' Retirement System of Georgia or other public retirement systems on July 1, 1992, shall not be impaired or interrupted by the transfer of such employees and membership in any such retirement system shall continue in the same status possessed by the transferred employees on June 30, 1992. Accrued annual and sick leave possessed by said employees on June 30, 1992, shall be retained by said employees as employees of the department.

(c)(1) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(2) The department is authorized to employ, on a full-time or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(3) Classified employees of the department under this chapter shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Administration.

(4) All personnel of the department are authorized to be members of the Employees' Retirement System of Georgia created in Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this chapter to the department, or otherwise had by persons at the time of employment with the department, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the department. (Code 1981, § 49-4A-5, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, § 8; Ga. L. 1998, p. 128, § 49; Ga. L. 2009, p. 453, § 2-22/HB 228; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, inserted "(now known as the Department of Human Services)" in the first sentence of subsection (b). The second 2009 amendment, effective

July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" twice in the second sentence of subsection (b) and once in paragraph (c)(3).

49-4A-6. Rules and regulations.

(a) The board shall adopt rules and regulations for the government, operation, administration, and maintenance of youth development centers and other juvenile detention facilities by the department and may also adopt such other rules and regulations for the government and operation of the department as the board may deem necessary consistent with the provisions of this chapter.

(b) Rules and regulations adopted by the board under subsection (a) of this Code section shall recognize that a primary purpose of youth development centers and other juvenile detention facilities is to carry out rehabilitative programs to the end that children and youth housed in said centers shall develop their self-respect and self-reliance and acquire the necessary knowledge and skills to become good citizens who are qualified for honorable employment. (Code 1981, § 49-4A-6, enacted by Ga. L. 1992, p. 1983, § 24.)

49-4A-7. Powers and duties of department.

(a) The department shall be authorized to:

(1) Accept for detention in a youth development center or other juvenile detention facility any child who is committed to the department under Article 1 of Chapter 11 of Title 15;

(2) Provide probation and parole and other court services for children and youth pursuant to a request from a court under Article 1 of Chapter 11 of Title 15;

(3) Provide casework services and care or payment of maintenance costs for children and youths who have run away from their home communities within this state or from their home communities in this state to another state or from their home communities in another state to this state; pay the costs of returning such runaway children and youths to their home communities; and provide such services, care, or costs for runaway children and youths as may be required under Chapter 3 of Title 39;

(4) Enter into contracts and cooperative agreements with federal, state, county, and municipal governments and their agencies and departments; enter into contracts with public and private institutions and agencies of this and other states; enter into leases with private vendors selected to operate programs on behalf of the department which leases shall run concurrently with the department's service contracts; provided, however, that any such lease shall provide that if the property which is the subject of the lease is sold and conveyed during the term of the lease, such lease shall expire by operation of law 90 days after the closing of

such sale and conveyance; and enter into contracts with individuals, as may be necessary or desirable in effectuating the purposes of this chapter; and

(5) Solicit and accept donations, contributions, and gifts and receive, hold, and use grants, devises, and bequests of real, personal, and mixed property on behalf of the state to enable the department to carry out its functions and purposes.

(b) When given legal custody over a child or youth for detention in a youth development center or other facility under court order under Article 1 of Chapter 11 of Title 15, the department shall have:

(1) The right of physical possession of the child or youth;

(2) The right and duty to protect, train, and discipline the child or youth;

(3) The responsibility to provide the child or youth with food, clothing, shelter, and education;

(4) The right to determine in which facility the child or youth shall live; and

(5) The right and duty to provide or obtain for a child or youth medical, hospital, psychiatric, surgical, or dental care or services as may be considered appropriate and necessary by competent medical authority without securing prior consent of parents or legal guardians.

(c) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner. (Code 1981, § 49-4A-7, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1994, p. 304, § 1; Ga. L. 1995, p. 955, § 1; Ga. L. 1997, p. 1414, § 1; Ga. L. 1998, p. 128, § 49.)

JUDICIAL DECISIONS

Medical care. — The state had a duty to provide youth in their custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia Tort

Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Department of Children & Youth Servs.*, 236 Ga. App. 696, 512 S.E.2d 339 (1999).

OPINIONS OF THE ATTORNEY GENERAL

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in the Department of Juvenile Justice facilities

prior to a formal commitment to the department are properly assessed to the counties. 2002 Op. Att'y Gen. No. 2002-6.

49-4A-8. Commitment of delinquent or unruly children; procedure; cost; return of mentally ill or retarded children; escapees; discharge; evidence of commitment; records; restitution.

(a) When any child or youth is adjudged to be in a state of delinquency or unruliness under Article 1 of Chapter 11 of Title 15 and the court does not release such child or youth unconditionally or place him or her on probation or in a suitable public or private institution or agency, the court may commit him to the department as provided in said Article 1 of Chapter 11 of Title 15; provided, however, that no delinquent or unruly child or youth shall be committed to the department until the department certifies to the Governor that it has facilities available and personnel ready to assume responsibility for delinquent or unruly children and youths.

(b) When the court commits a delinquent or unruly child to the department, it may order the child conveyed forthwith to any facility designated by the department or direct that the child be left at liberty until otherwise ordered by the department under such conditions as will ensure his availability and submission to any orders of the department. If such delinquent or unruly child is ordered conveyed to the department, the court shall assign an officer or other suitable person to convey such child to any facility designated by the department, provided that the person assigned to convey a girl must be a female. The cost of conveying such child committed to the department to the facility designated by the department shall be paid by the county from which such child is committed, provided that no compensation shall be allowed beyond the actual and necessary expenses of the party conveying and the child conveyed.

(c) When a court commits a delinquent or unruly child to the department, the court shall at once forward to the department a certified copy of the order of commitment and the court, the probation officer, the prosecuting and police authorities, the school authorities, and other public officials shall make available to the department all pertinent information in their possession with respect to the case. Such reports shall, if the department so requests, be made upon forms furnished by the department or according to an outline provided by the department.

(d)(1) When a delinquent or unruly child has been committed to the department, the department shall, under rules and regulations established by the board, forthwith examine and study the child and investigate all pertinent circumstances of his life and behavior. The department shall make periodic reexaminations of all delinquent or unruly children within its control, except those on release under supervision of the department. Such reexaminations may be made as frequently as the department considers desirable and shall be made with respect to every child at intervals not exceeding one year. Failure of the department to examine a delinquent or unruly child committed to it or to reexamine

him within one year of a previous examination shall not of itself entitle the child to discharge from control of the department but shall entitle the child to petition the committing court for an order of discharge; and the court shall discharge him unless the department, upon due notice, satisfies the court of the necessity of further control.

(2) The department shall keep written records of all examinations and reexaminations, of conclusions based thereon, and of all orders concerning the disposition or treatment of every delinquent or unruly child subject to its control. Records as may be maintained by the department with respect to a delinquent or unruly child committed to the department shall not be public records but shall be privileged records and may be disclosed by direction of the commissioner pursuant to federal law in regard to disseminating juvenile criminal history records only to those persons having a legitimate interest therein; provided, however, that the commissioner shall permit the Council of Juvenile Court Judges to inspect and copy such records for the purposes of obtaining statistics on juveniles.

(e) Except as provided by subsection (e.1) of this Code section and subsection (b) of Code Section 15-11-70, when a delinquent or unruly child has been committed to the department for detention and a diagnostic study for the purpose of determining the most satisfactory plan for the child's care and treatment has been completed, the department may:

(1) Permit the child liberty under supervision and upon such conditions as the department may believe conducive to acceptable behavior;

(2) Order the child's confinement under such conditions as the department may believe best designed to serve the child's welfare and as may be in the best interest of the public;

(3) Order reconfinement or renewed release as often as conditions indicate to be desirable;

(4) Revoke or modify any order of the department affecting the child, except an order of final discharge, as often as conditions indicate to be desirable; or

(5) Discharge the child from control of the department pursuant to subsection (a) of Code Section 15-11-70 when it is satisfied that such discharge will best serve the child's welfare and the protection of the public.

(e.1)(1) When a child who has been adjudicated delinquent for the commission of a designated felony act as defined in Code Section 15-11-63 is released from confinement or custody of the department, it shall be the responsibility of the department to provide notice to any person who was the victim of the child's delinquent acts that the child is being released from confinement or custody.

(2) As long as a good faith attempt to comply with paragraph (1) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by paragraph (1) of this subsection.

(3) When a child convicted of a felony offense in a superior court is released from confinement or custody of the department, the department shall provide written notice, including the delinquent or designated felony act committed, to the superintendent of the school system in which such child was enrolled or, if the information is known, the school in which such child was enrolled or plans to be enrolled.

(4) As long as a good faith attempt to comply with paragraph (3) of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide notice required by paragraph (3) of this subsection.

(f) As a means of correcting the socially harmful tendencies of a delinquent or unruly child committed to it, the department may:

(1) Require participation by youth in moral, academic, vocational, physical, and correctional training and activities, and provide youth the opportunity for religious activities where practicable in the institutions under the control and supervision of the department;

(2) Require such modes of life and conduct as may seem best adapted to fit and equip him for return to full liberty without danger to the public;

(3) Provide such medical, psychiatric, or casework treatment as is necessary; or

(4) Place him, if physically fit, in a park, maintenance camp, or forestry camp or on a ranch owned by the state or by the United States and require any child so housed to perform suitable conservation and maintenance work, provided that the children shall not be exploited and that the dominant purpose of such activities shall be to benefit and rehabilitate the children rather than to make the camps self-sustaining.

(g) When funds are available, the department may:

(1) Establish and operate places for detention and diagnosis of all delinquent or unruly children committed to it;

(2) Establish and operate additional treatment and training facilities, including parks, forestry camps, maintenance camps, ranches, and group residences necessary to classify and handle juvenile delinquents of different ages and habits and different mental and physical conditions, according to their needs; and

(3) Establish parole or aftercare supervision to aid children given conditional release to find homes and employment and otherwise to assist them to become reestablished in the community and to lead socially acceptable lives.

(h) Whenever the department finds that any delinquent or unruly child committed to the department is mentally ill or mentally retarded, the department shall have the power to return such delinquent or unruly child to the court of original jurisdiction for appropriate disposition by that court or may, if it so desires, request the court having jurisdiction in the county in which the youth development center or other facility is located to take such action as the condition of the child may require.

(i)(1) A child who has been committed to the department as a delinquent or unruly child for detention in a youth development center or who has been otherwise taken into custody and who has escaped therefrom or who has been placed under supervision and broken the conditions thereof may be taken into custody without a warrant by a sheriff, deputy sheriff, constable, police officer, probation officer, parole officer, or any other officer of this state authorized to serve criminal process, upon a written request made by an employee of the department having knowledge of the escape or of the violation of conditions of supervision. Before a child may be taken into custody for violation of the conditions of supervision, the written request mentioned above must be reviewed by the commissioner or his designee. If the commissioner or his designee finds that probable cause exists to believe that the child has violated his conditions of supervision, he may issue an order directing that the child be picked up and returned to custody.

(2) The commissioner may designate as a peace officer who is authorized to exercise the power of arrest any employee of the department whose full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in its institutions, facilities, or programs, or any employee who is a line supervisor of any such employee. The commissioner also may designate as a peace officer who is authorized to exercise the power of arrest any employee of a person or organization which contracts with the department pertaining to the management, custody, care, and control of delinquent children retained by the person or organization, if that employee's full-time duties include the preservation of public order, the protection of life and property, the detection of crime, or the supervision of delinquent and unruly children in the department's institutions, facilities, or programs, or any employee who is a line supervisor of such employee. The commissioner may designate one or more employees of the department to investigate and apprehend delinquent and unruly children who have escaped from an institution or facility or who have broken the conditions of supervision; provided,

however, that the employees so designated shall only be those with primary responsibility for the security functions of youth development centers or whose primary duty consists of the apprehension of youths who have escaped from such institutions or facilities or who have broken the conditions of supervision. An employee of the department so designated shall have the police power to investigate, to apprehend such children, and to arrest any person physically interfering with the proper apprehension of such children. An employee of the department so designated in the investigative section of the department shall have the power to obtain a search warrant for the purpose of locating and apprehending such children. Additionally, such employee, while on the grounds or in the buildings of the department's institutions or facilities, shall have the same law enforcement powers, including the power of arrest, as a law enforcement officer of the local government with police jurisdiction over such institutions or facilities. Such employee shall be authorized to carry weapons, upon written approval of the commissioner, notwithstanding Code Sections 16-11-126, 16-11-128, and 16-11-129. The commissioner shall also be authorized to designate any person or organization with whom the department contracts for services pertaining to the management, custody, care, and control of delinquent and unruly children detained by the person or organization as a law enforcement unit under paragraph (7) of Code Section 35-8-2. Any employee or person designated under this subsection shall be considered to be a peace officer within the meaning of Chapter 8 of Title 35 and must be certified under that chapter.

(3) For the purposes of investigation of delinquent or unruly children who have escaped from institutions or facilities of the department or of delinquent or unruly children who are alleged to have broken the conditions of supervision, the department is empowered and authorized to request and receive from the Georgia Crime Information Center, established by Chapter 3 of Title 35, any information in the files of the Georgia Crime Information Center which will aid in the apprehension of such children.

(4) An employee designated pursuant to paragraph (2) of this subsection may take a child into custody without a warrant upon personal knowledge or written request of a person having knowledge of the escape or violation of conditions of supervision, or a child may be taken into custody pursuant to Code Section 15-11-45. When taking a child into custody pursuant to this paragraph, a designated employee of the department shall have the power to use all force reasonably necessary to take the child into custody.

(5) The child shall be kept in custody in a suitable place designated by the department and there detained until such child may be returned to the custody of the department.

(6) Such taking into custody shall not be termed an arrest; provided, however, that any person taking a child into custody pursuant to this subsection shall have the same immunity from civil and criminal liability as a peace officer making an arrest pursuant to a valid warrant.

(j) The department shall ensure that each delinquent or unruly child it releases under supervision or otherwise has suitable clothing, transportation to his home or to the county in which a suitable home or employment has been found for him, and such an amount of money as the rules and regulations of the board may authorize. The expenditure for clothing and for transportation and the payment of money to a delinquent or unruly child released may be made from funds for support and maintenance appropriated by the General Assembly to the department or to the institution from which such child is released or from local funds.

(k) Every child committed to the department as delinquent or unruly, if not already discharged, shall be discharged from custody of the department when he reaches his twenty-first birthday.

(l) Commitment of a delinquent or unruly child to the custody of the department shall not operate to disqualify such child in any future examination, appointment, or application for public service under the government either of the state or of any political subdivision thereof.

(m) A commitment to the department shall not be received in evidence or used in any way in any proceedings in any court, except in subsequent proceedings for delinquency or unruliness involving the same child and except in imposing sentence in any criminal proceeding against the same person.

(n) The department shall conduct a continuing inquiry into the effectiveness of treatment methods it employs in seeking the rehabilitation of maladjusted children. To this end, the department shall maintain a statistical record of arrests and commitments of its wards subsequent to their discharge from the jurisdiction and control of the department and shall tabulate, analyze, and publish annually these data so that they may be used to evaluate the relative merits of methods of treatment. The department shall cooperate with courts and public and private agencies in the collection of statistics and information regarding juvenile delinquency; arrests made; complaints, informations, and petitions filed; the disposition made thereof; and other information useful in determining the amount and causes of juvenile delinquency in this state. In order to facilitate the collection of such information, the department shall be authorized to inspect and copy all records of the court and law enforcement agencies pertaining to juveniles.

(o) When a child who is committed to the department is under court order to make certain restitution as a part of his treatment by the court, the requirement that the restitution be paid in full shall not cease with the

order of commitment. The provision of the order requiring restitution shall remain in force and effect during the period of commitment and the department is empowered to enforce said restitution requirement and to direct that payment of funds or notification of service completed be made to the clerk of the juvenile court or another employee of that court designated by the judge. (Code 1981, § 49-4A-8, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1993, p. 313, § 1; Ga. L. 1995, p. 619, § 8; Ga. L. 1996, p. 1016, §§ 1, 2; Ga. L. 1997, p. 582, § 3; Ga. L. 2000, p. 20, § 26; Ga. L. 2006, p. 293, § 4/HB 1145.)

Editor's notes. — Ga. L. 2006, p. 293, Part II, § 2, not codified by the General Assembly, provided that the changes made by Part II of that Act shall be known and may be cited as "Amy's Law". Part II of Ga. L. 2006, p. 293 amended Code Sections 15-11-70 and 49-4A-8.

Law reviews. — For note on the 1995 amendment of this Code section and O.C.G.A. § 49-4A-9, see 12 Ga. St. U.L. Rev. 80 (1995).

JUDICIAL DECISIONS

Transfer to youth development center without hearing. — Juvenile's constitutional rights were not violated when a probation officer made the decision to transport the juvenile to a regional youth development center without a hearing. *Sawyer v. Coleman*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

Pursuit of escaped juvenile. — A proba-

tion officer did not violate O.C.G.A. § 49-4A-8(i)(1) when the officer personally pursued a juvenile after the juvenile ran away while the officer was attempting to transport the juvenile to a regional youth development center. *Sawyer v. Coleman*, 245 Ga. App. 49, 537 S.E.2d 179 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for providing education. — When a student is committed to the department, the educational agency responsible for providing a free and appropriate public education under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is either the department or the local school district in which the student resides. 1995 Op. Att'y Gen. No. 95-6.

All costs related to subsistence and detention, including emergency medical costs, incurred on behalf of juveniles held in Department of Juvenile Justice facilities prior to a formal commitment to the department are properly assessed to the counties. 2002 Op. Att'y Gen. No. 2002-6.

49-4A-9. Sentence of youthful offenders; modification of order; review; participation in programs.

(a) Any child who has previously been adjudged to have committed an act which is a felony if tried in a superior court and who, on a second or subsequent occasion, is convicted of a felony in a superior court may, in the discretion of the court, be sentenced into the custody of the department as otherwise provided by law or be committed as a youthful offender as authorized in Chapter 7 of Title 42; provided, further, that any child

convicted of a felony punishable by death or by confinement for life shall only be sentenced into the custody of the Department of Corrections.

(b) Any final order of judgment by the court in the case of any such child shall be subject to such modification from time to time as the court may consider to be for the welfare of such child. No commitment of any child to any institution or other custodial agency shall deprive the court of jurisdiction to change the form of the commitment or transfer the custody of the child to some other institution or agency on such conditions as the court may see fit to impose, the duty being constant upon the court to give to all children subject to its jurisdiction such oversight and control in the premises as will be conducive to the welfare of the child and the best interests of the state; provided, however, that the release or parole of any child committed to the department for detention in any of its institutions under the terms of this chapter during the period of one year from the date of commitment shall be had only with the concurrence and recommendation of the commissioner or the commissioner's designated representative; provided, further, that upon releasing or paroling any child adjudicated delinquent for the commission of a designated felony act as defined in Code Section 15-11-63 and committed to the department for detention in any of its institutions under the terms of this chapter, the department shall provide notice to any person who was the victim of the child's delinquent acts that the child is being released or paroled. As long as a good faith attempt to comply with the notice requirement of this subsection has been made, the department and employees of the department shall not be liable for damages incurred by reason of the department's failure to provide the notice required by this subsection.

(c) After the expiration of one year from the date of commitment, the committing court shall review the case and make such order with respect to the continued confinement or release of the child back to the committing court for further disposition as the court deems proper.

(d) In the event adequate facilities are not available, the department shall have the right to transfer youths committed to the department under this Code section to the Department of Corrections for incarceration in an appropriate facility designated by the Department of Corrections.

(e) Any child under 17 years of age who is sentenced in the superior court and committed to the department may be eligible to participate in all youth development center programs and services including community work programs, sheltered workshops, special state sponsored programs for evaluation and services under the Division of Rehabilitation Services of the Department of Labor and the Department of Behavioral Health and Developmental Disabilities, and under the general supervision of youth development center staff at special planned activities outside of the youth development center. When such a child sentenced in the superior court is approaching his or her seventeenth birthday, the department shall notify

the court that a further disposition of the child is necessary. The department shall provide the court with information concerning the participation and progress of the child in programs described in this subsection. The court shall review the case and determine if the child, upon becoming 17 years of age, should be placed on probation, have his or her sentence reduced, be transferred to the Department of Corrections for the remainder of the original sentence, or be subject to any other determination authorized by law. (Code 1981, § 49-4A-9, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1995, p. 619, § 9; Ga. L. 2000, p. 20, § 27; Ga. L. 2000, p. 1137, § 2; Ga. L. 2002, p. 1324, § 1-22; Ga. L. 2009, p. 453, § 3-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Behavioral Health and Developmental Disabilities” for “Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources” in the first sentence of subsection (e).

Administrative rules and regulations. — Administrative revocations of juvenile community placement, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Juvenile Justice, Chapter 97-2.

OPINIONS OF THE ATTORNEY GENERAL

Application to juveniles prosecuted as adults. — O.C.G.A. § 49-4A-9(e) applies to all juveniles convicted of a felony in superior court, except those for which potential pun-

ishments include the death penalty or life imprisonment. 1996 Op. Att’y Gen. No. U96-5.

49-4A-10. Escape from youth detention center; petition; commitment.

Whenever any child shall escape from any youth detention center, the department shall file a petition in the court having jurisdiction and, upon conviction, he or she shall be committed for an additional 12 months in a youth detention center under the jurisdiction of the department or to another institution under the Department of Corrections. (Code 1981, § 49-4A-10, enacted by Ga. L. 1992, p. 1983, § 24.)

49-4A-11. Aiding or encouraging child to escape; hindering apprehension of child; provision of contraband to child; possession of contraband by child; penalties.

(a) Any person who shall knowingly aid, assist, or encourage any child or youth who has been committed to the department to escape or to attempt to escape its control or custody shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

(b) Any person who shall knowingly harbor or shelter any child or youth who has escaped the lawful custody or control of the department shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

(c) Any person who shall knowingly hinder the apprehension of any child under the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

(d) Any person who shall knowingly provide to any child under the lawful control or custody of the department a gun, pistol, or any other weapon, any intoxicating liquor, any controlled substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to department personnel without the consent of the director of the institution providing care and supervision to the child shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years.

(e) Any child who shall knowingly possess a gun, pistol, or any other weapon, any intoxicating liquor, any controlled substance listed in Code Section 16-13-27 as a Schedule III controlled substance, listed in Code Section 16-13-28 as a Schedule IV controlled substance, or listed in Code Section 16-13-29 as a Schedule V controlled substance, or an immediate precursor of any such controlled substance, or any dangerous drug as defined by Code Section 16-13-71, regardless of the amount, or any other harmful, hazardous, or illegal article or item which may be injurious to department personnel given to said child in violation of subsection (d) of this Code section while under the lawful custody or control of the department shall cause the department to file a delinquency petition in the court having jurisdiction; provided, however, if such person is 17 or older and is under the lawful custody or control of the department, such person shall be guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one nor more than five years. (Code 1981, § 49-4A-11, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1996, p. 988, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “nor” was substituted for “or” near the end of subsections (a), (b), (c), and (e).

Editor’s notes. — Ga. L. 1996, p. 988, § 3, not codified by the General Assembly, makes

this Code section applicable to offenses committed on or after July 1, 1996.

Law reviews. — For review of 1996 children and youth services legislation, see 13 Ga. U.L. Rev. 314 (1996).

49-4A-12. Special school district.

(a) The Department of Juvenile Justice shall be a special school district which shall be given the same funding consideration for federal funds that school districts within the state are given.

(b) The schools within the department shall be under the control of the commissioner who shall serve as the superintendent of schools for such district. The Board of Juvenile Justice shall serve as the board of education for such district.

(c)(1) The schools shall meet the requirements of the law for public schools and rules and regulations of the State Board of Education. It is the intent of this Code section to fund educational services and programs in this special school district so that youth served therein shall receive the same quality and content of educational services as provided to youth in school districts within the state.

(2) The State School Superintendent may grant waivers for such provisions of the laws and regulations with which the schools cannot comply because of their functioning on an annual basis and in response to the commissioner or the commissioner's designee's written request and justification. Such exceptions shall be in writing.

(d)(1) Each teacher in the special school district shall receive annual compensation at the rate specified for the type of certificate held by such teacher based on the appropriate teacher salary schedules established pursuant to Code Section 20-2-212.

(2) This provision shall not act to reduce the compensation currently paid any teacher in the special school district.

(3) To the extent such resources are available, federal funding resources shall be utilized to meet increased costs resulting from implementation of this subsection.

(e) The commissioner shall develop and implement a plan whereby there shall be sufficient substitute teachers available for temporary service as needed for each school composing the special school district.

(f)(1) Nothing in the language of this Code section shall be construed as prohibiting any local school district from issuing a diploma to a youth in the custody of the department, upon certification of the principal of a departmental school.

(2) School records of any juvenile in the department's programs who is issued a diploma by a local school district shall be maintained by such local school district, provided that all references to the juvenile's commitment to and treatment by the department are expunged.

(g) The special school district under the department shall have the powers, privileges, and authority exercised or capable of exercise by any other school district.

(h) The effect of this Code section shall not be to provide state funds to the special school district under the department through Part 4 of Article 6 of Chapter 2 of Title 20. (Code 1981, § 49-4A-12, enacted by Ga. L. 1992, p. 1983, § 24; Ga. L. 1997, p. 1453, §§ 1, 3.)

Administrative rules and regulations. — State of Georgia, Georgia Department of Education, Regional Education Services, § 160-5-14.01.

OPINIONS OF THE ATTORNEY GENERAL

Responsibility for providing education. — When a student is committed to the department, the educational agency responsible for providing a free and appropriate public education under the federal Individuals with Disabilities Education Act (20 U.S.C. § 1400 et seq.) is either the department or the local school district in which the student resides. 1995 Op. Att'y Gen. No. 95-6.

Eligibility of department to receive tuition grants. — The department is eligible to receive tuition grants for disabled students whose federal Individualized Education Programs (20 U.S.C. § 1400 et seq.) place them in private residential programs for educational reasons. 1995 Op. Att'y Gen. No. 95-6.

49-4A-13. Family attention home; assessment of risk and plan of care.

As used in this Code section, the term “family attention home” means a private family home that has contracted with the Department of Juvenile Justice to provide 24 hour, short-term care for youth in the custody of the department and placed by the department in the home. Said youth are either awaiting a juvenile court hearing or have been temporarily removed from their homes for other reasons. Prior to a youth being placed in a private family attention home, an assessment of the youth’s risk to the public will be completed by the department, and based on that assessment a plan of care for each youth will be developed within 72 hours after placement. This plan shall detail the youth’s need for adult supervision, the youth’s need for structured after-school activities, the need for electronic monitoring, if appropriate, and any other additional treatment needs while the youth is in the home. This plan of care shall be developed and implemented to ensure the safety of the children and youth in each private family attention home and the residents of the communities in which the private family attention homes are located. (Code 1981, § 49-4A-13, enacted by Ga. L. 1994, p. 495, § 1; Ga. L. 1997, p. 1453, § 1.)

49-4A-14. Compensation for damage to apparel by youth under custody.

(a) As used in this Code section, the term “apparel” includes eyeglasses, hearing aids, clothing, and similar items worn on the person of the employee.

(b) When action by a youth under the control and custody of the department results in damage to an item of apparel, the department shall compensate the employee for the loss in the amount of either the repair cost, the replacement value, or the actual cost of the item of wearing apparel, whichever is less. Such loss shall be compensated only in accordance with procedures to be established by the department, and no compensation shall be made by the department in excess of \$500.00 per incident. (Code 1981, § 49-4A-14, enacted by Ga. L. 1997, p. 563, § 1.)

CHAPTER 5

PROGRAMS AND PROTECTION FOR CHILDREN AND YOUTH

Article 1		Sec.	
Children and Youth Services		49-5-13.	Private day-care centers not required to meet federal adult-child ratio.
Sec.			
49-5-1.	Short title.	49-5-14.	Fire inspections of day-care homes and centers; fire safety codes [Repealed].
49-5-2.	Purpose of article.		
49-5-3.	Definitions.	49-5-15.	Notice as to child brought into state for placement or adoption; bond; certificate as to foster home; reports.
49-5-4.	Other state departments, agencies, officers, and employees to assist department.	49-5-16.	Power of department to contract; acceptance of children from federal courts for compensation.
49-5-5.	Powers and duties of board; rules and regulations for training schools and other facilities.	49-5-17.	Power of department to accept and use gifts.
49-5-6.	Merit system to conform to federal standards; power to employ and contract for professional services; employment and dismissal procedures; membership in state retirement system.	49-5-18.	Instituting or intervening in legal proceedings.
49-5-7.	Development and administration of public child welfare and youth services.	49-5-19.	Annual report on children and youth services.
49-5-8.	Powers and duties of department.	49-5-20.	Existing charters of charitable institutions.
49-5-9.	Use of public and private institutions and agencies; inspections; examination and control of children not in department's facilities.	49-5-21.	Penalties for aiding, harboring, or encouraging escapees or hindering their apprehension.
49-5-10.	Commitment of delinquent or unruly children to department; procedures; handling and treatment; escape and apprehension; release; termination of control [Repealed].	49-5-22.	Voluntary pre-kindergarten programs to provide toilet facilities screened for privacy.
49-5-10.1.	Temporary transfer of at-risk unruly or delinquent children to Department of Corrections; procedure; review; discharge [Repealed].	49-5-23.	Obtaining information on recall notices.
49-5-11.	Escape from a youth detention center [Repealed].		
49-5-12.	Licensing and inspection of child welfare agencies; standards; revocation or refusal of license; penalties; violations.		
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Article 2			
Child Abuse and Deprivation Records			
		49-5-40.	Definitions; confidentiality of records; restricted access to records.
		49-5-41.	Persons and agencies permitted access to records.
		49-5-41.1.	Inspection and retention of records of juvenile drug use.
		49-5-42.	Rules and regulations.
		49-5-43.	Article not to conflict with federal law or lose federal funds; duty of board.
		49-5-44.	Penalties for unauthorized access to records; use of records

- Sec. in public and criminal proceedings.
- 49-5-45. Penalty for allowing unauthorized access to juvenile drug use records.
- 49-5-46. Liability of department or agency.

Article 3

Employees' Records Checks for Day-care Centers

- 49-5-60. Definitions.
- 49-5-61. Requirement of separate license and separate director for each new facility.
- 49-5-62. Records check application for director of new facility; preliminary records check for employees.
- 49-5-63. Notice of determination; issue of license; effect of unsatisfactory determination.
- 49-5-64. Fingerprint records check.
- 49-5-65. Determination on the basis of fingerprint records check; revocation of license.
- 49-5-65.1. Employment of persons who have entered plea of guilty or nolo contendere to specified offenses [Repealed].
- 49-5-66. Separate license and center.
- 49-5-67. Fingerprint records check application for director of existing facility; preliminary records check for employees; annual license.
- 49-5-68. Change of director.
- 49-5-69. Employment requirements; suspension or revocation of license or criminal penalty for violations.
- 49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; violations; foster parents known to have criminal records.
- 49-5-70. Required cooperation among state agencies; unauthorized use of criminal history record information.
- 49-5-71. Immunity from liability for centers, state agencies, and employees.

- Sec. 49-5-72. Supplemental nature of article's requirements.
- 49-5-73. Applicability of "Georgia Administrative Procedure Act"; consideration of matters in mitigation of conviction.
- 49-5-74. Administration of article.

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- 49-5-90. Definitions.
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- 49-5-132. Governor's Office of Children and Families established; funding; duties and responsibilities.
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- 49-5-180. Definitions.
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- 49-5-184. Information to be included in abuse registry; hearing on expungement of name from registry; order; appeal.
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- 49-5-187. Immunity from civil or criminal liability.

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49-5-200 through 49-5-209 [Repealed].

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- 49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.
- 49-5-221. Definitions.
- 49-5-222. Guiding principles for coordinated system of care.
- 49-5-223. Contents of plan; information to be collected; updating of plan; implementation date.
- 49-5-224. Commissioner of behavioral health and developmental disabilities to submit annual report; contents of report.
- 49-5-225. Local interagency committees; membership; function of committees.
- 49-5-226. Placement of children and adolescents out of state for treatment.
- 49-5-227. Governor's Office for Children and Families to comment on plan for Coordinated System of Care and provide recommendations.

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49-5-240 through 49-5-244. [Redesignated].

Article 12

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49-5-250 through 49-5-264 [Repealed].

Article 13

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- 49-5-270. Short title.
- 49-5-271. Legislative findings.
- 49-5-272. Definitions.
- 49-5-273. (For effective date, see note.) Creation of PeachCare; availability; eligibility; payment of

Sec.	premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.	Sec. 49-5-281.	Bill of rights for foster parents; filing of grievance in event of violations.
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Article 14

Foster Parents Bill of Rights

49-5-280. Short title.

Editor’s notes. — By resolution (Ga. L. 1986, p. 1204), the General Assembly urged certain public organizations and state agencies to develop programs for the education and training of social services and criminal justice professionals in the areas of child abuse, sexual abuse, and sexual exploitation.

Administrative rules and regulations. — Bright from the Start, Georgia Department of Early Care and Learning, Official Compi-

lation of the Rules and Regulations of the State of Georgia, title 591.

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

For case comment, “Taylor v. Ledbetter: Vindicating the Constitutional Rights of Foster Children to Adequate Care and Protection,” see 22 Ga. L. Rev. 1187 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Construction. — Ga. L. 1963, p. 81 et seq. and Ga. L. 1971, p. 709 et seq. (see O.C.G.A. Ch. 5, T. 49 and Ch. 11, T. 15) should be read in pari materia. 1980 Op. Att’y Gen. No. 80-53.

RESEARCH REFERENCES

ALR. — Tort liability of public authority for failure to remove parentally abused or neglected children from parents’ custody, 60 ALR4th 942.

ARTICLE 1

CHILDREN AND YOUTH SERVICES

Cross references. — Distribution of prostitution proceeds following forfeiture to programs serving child victims, § 16-6-13.3. Commencement of juvenile court proceeding for child on aftercare to Division of Youth Services, Uniform Rules for the Juvenile Courts of Georgia, Rule 4.6. Commitment of child to Division of Youth Services by juvenile court, Uniform Rules for the Juvenile Courts of Georgia, Rule 15.2.

49-5-1. Short title.

The short title of this article shall be the “Children and Youth Act.” (Ga. L. 1963, p. 81, § 1.)

Cross references. — Probation officers, Uniform Rules for the Juvenile Courts of Georgia, Rule 2.4.

Administrative rules and regulations. — Recovery and administration of child support, Official Compilation of the Rules and

Regulations of the State of Georgia, Department of Human Resources, Office of Child Support Recovery, Chapter 290-7-1.

JUDICIAL DECISIONS

Custody and control exclusively in department. — Ga. L. 1963, p. 81 et seq. and Ga. L. 1971, p. 709 et seq. (see O.C.G.A. Ch. 11, T. 15 and Ch. 5, T. 49) when construed in pari materia, evidence a legislative intent that, once the juvenile court judge in the exercise of judicial discretion commits a juvenile to the Division for Children and Youth (now Department of Children and Youth Services) custody and control of the juvenile is thereby and thereafter exclusively in the

division (now department). In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977); In re R.L.M., 171 Ga. App. 940, 321 S.E.2d 435 (1984).

Cited in Brown v. Holloway, 112 Ga. App. 539, 145 S.E.2d 600 (1965); Carrindine v. Ricketts, 236 Ga. 283, 223 S.E.2d 627 (1976); In re A.S., 140 Ga. App. 865, 232 S.E.2d 145 (1977); Ellis v. State, 289 Ga. App. 452, 657 S.E.2d 562 (2008).

49-5-2. Purpose of article.

The purpose of this article is to promote, safeguard, and protect the well-being and general welfare of children and youth of this state through a comprehensive and coordinated program of public child welfare and youth services, providing for:

- (1) Social services and facilities for children and youths who require care, control, protection, treatment, or rehabilitation and for the parents of such children;
- (2) Setting of standards for social services and facilities for children and youths;
- (3) Cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children and youth; and
- (4) Promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development, and well-being of their children.

It is the further purpose of this article to provide for a qualified group of citizens and leading professionals who will identify and study the problems of youth, recommend and effect possible solutions, and work actively for state and local action to prevent children and youths from becoming inmates of our prisons, patients in our mental hospitals, and persons dependent upon public assistance programs. (Ga. L. 1963, p. 81, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Fire safety standards for day care centers. — The Board of Human Resources had lawful authority to adopt the 1973 Life Safety

Code (National Fire Protection Association standard 101), a comprehensive set of standards that deals with preventing and control-

ling losses from fire, as part of the rules and regulations for day care centers, and the Department of Human Resources has lawful authority to enforce compliance with code standards. 1976 Op. Att'y Gen. No. U76-6.

Contracting with private institution for provision of day care. — The department may contract with a private institution for the purpose of providing day care and other specialized services for mentally retarded

children, assign responsibility for the supervision of this contract to the Division for Children and Youth (now Department of Children and Youth Services) and use funds allocated from the Governor's Emergency Fund for these purposes, provided that the contracts do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-96.

RESEARCH REFERENCES

ALR. — Parent's obligation to support unmarried minor child who refuses to live with parent, 98 ALR3d 334.

49-5-3. Definitions.

As used in this article, the term:

(1) "Child-caring institution" means any institution, society, agency, or facility, whether incorporated or not, which either primarily or incidentally provides full-time care for children through 18 years of age outside of their own homes, subject to such exceptions as may be provided in rules and regulations of the board.

(2) "Child-placing agency" means any institution, society, agency, or facility, whether incorporated or not, which places children in foster homes for temporary care or for adoption.

(3) "Child welfare and youth services" means duties and functions authorized or required by this article to be provided by the department with respect to:

(A) Establishment and enforcement of standards for social services and facilities for children and youths which supplement or substitute for parental care and supervision for the purpose of preventing or remedying or assisting in the solution of problems which may result in neglect, abuse, exploitation, or delinquency of children and youths;

(B) Protecting and caring for deprived children and youths;

(C) Protecting and promoting the welfare of children of working mothers;

(D) Providing social services to children and youths and their parents and care for children and youths born out of wedlock and their mothers;

(E) Promotion of coordination and cooperation among organizations, agencies, and citizen groups in community planning, organization, development, and implementation of such services; and

(F) Otherwise protecting and promoting the welfare of children and youths, including the strengthening of their homes where possible or, where needed, the provision of adequate care of children and youths away from their homes in foster family homes or day-care or other child care facilities.

(4) "Children's transition care center" means a transition center which provides a temporary, home-like environment for medically fragile children, technology dependent children, and children with special health care needs, up to 21 years of age, who are deemed clinically stable by a physician but dependent on life-sustaining medications, treatments, and equipment and who require assistance with activities of daily living to facilitate transitions from a hospital or other facility to a home or other appropriate setting. Such centers are designated sites that provide child placing services and nursing care, clinical support services, and therapies for short-term stays of one to 14 days and for longer stays of up to 90 days to facilitate transitions of children to homes or other appropriate settings. Extended stays of up to 12 months may be approved by the department by waiver.

(5) "Deprived child or youth" means any person so adjudged under Chapter 11 of Title 15.

(6) Reserved.

(7) Reserved.

(8) Reserved.

(9) "Group-care facility" means a place providing care for groups of children and youths, other than a foster family home.

(9.1) Reserved.

(10) "Homemaker service" means a service provided by a woman selected for her skills in the care of children and home management and placed in a home to help maintain and preserve the family life during the absence or incapacity of the mother.

(11) "In loco parentis" means a quasi-parental relationship inferred from and implied by the fact that a child or youth has been taken into a family and treated like any other member thereof, unless an express contract exists to the contrary.

(12) "Legal custody" means a legal status created by court order embodying the following rights and responsibilities:

(A) The right to have the physical possession of the child;

(B) The right and the duty to protect, train, and discipline the child;

(C) The responsibility to provide the child with food, clothing, shelter, education, and ordinary medical care; and

(D) The right to determine where and with whom the child shall live,

provided that these rights and responsibilities shall be exercised subject to the powers, rights, duties, and responsibilities of the guardian of the person of the child and subject to any residual parental rights and responsibilities. These rights shall be subject to judicial oversight and review pursuant to Code Section 15-11-55.

(13) “Maintenance” means all general expenses for care such as board; shelter; clothing; medical, dental, and hospital care; transportation; and other necessary or incidental expenses.

(14) “Maternity home” means any place in which any person, society, agency, corporation, or facility receives, treats, or cares for, within any six-month period, more than one pregnant woman whose child is to be born out of wedlock, either before, during, or within two weeks after childbirth. This definition shall not include women who receive maternity care in the home of a relative or in general or special hospitals, licensed according to law, in which maternity treatment and care is part of the medical services performed and the care of children is only brief and incidental.

(15) “Probation” means a legal status created by court order following adjudication in a delinquency case, whereby a child or youth is permitted to remain in the community, subject to supervision by the court or an agency designated by the court and subject to being returned to court at any time during the period of probation.

(16) “Protective supervision” means a legal status created by court order following adjudication in a deprivation case, whereby a child’s place of abode is not changed but assistance directed at correcting the deprivation is provided through the court or an agency designated by the court.

(17) “Shelter” or “shelter care” means temporary care in a non-security or open type of facility. (Ga. L. 1963, p. 81, § 3; Ga. L. 1982, p. 706, §§ 2, 6-8; Ga. L. 1988, p. 1720, § 16; Ga. L. 1991, p. 408, § 1; Ga. L. 1992, p. 1983, § 25; Ga. L. 1994, p. 97, § 49; Ga. L. 2004, p. 645, § 7; Ga. L. 2007, p. 590, § 3/HB 153; Ga. L. 2008, p. 1145, § 1/HB 984.)

The 2007 amendment, effective July 1, 2007, in paragraph (12), deleted “or youth” following “child” at the end of subparagraph (12)(A), substituted “the child” for “him” at the end of subparagraph (12)(B), substituted “the child” for “him” in subparagraph (12)(C), substituted “the child” for “he” in subparagraph (12)(D), and, in the proviso, deleted “or youth” following

“person of the child”, and added the last sentence.

The 2008 amendment, effective July 1, 2008, substituted the present provisions of paragraph (4) for “Reserved”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a hyphen was deleted from the phrase “child care” in subparagraph (3)(F).

JUDICIAL DECISIONS

“Legal custody.” — Visitation rights of a parent of a child in the custody of the Department of Family and Children Services are a residual “parental tie” which is not severed by the mere placement of the child in the temporary custody of the department, without a specific finding as to that right. In re K.B., 188 Ga. App. 199, 372 S.E.2d 476 (1988).

Once temporary legal custody of a child was placed in the department under a shelter care order, the sole right to determine where and with whom the child would live vested with the department; the direction of the trial court to remove the child from the father’s home was not binding, and the trial court’s later contempt finding based on this order was improper. In re Tidwell, 279 Ga. App. 734, 632 S.E.2d 690 (2006).

Juvenile court erred in awarding legal custody of two children to the Department of Family and Children Services (DFACS) and then ordering that physical custody be given to the maternal grandparents as: (1) once legal custody of a deprived child has been granted to DFACS, the juvenile court cannot dictate physical custody; (2) nothing in O.C.G.A. § 15-11-55(a)(2) allowed any redefinition of legal custody as defined in O.C.G.A. § 49-5-3(12); (3) using the rules of construction, § 15-11-55(a)(2) followed the statutory and legal precedent that the grant of legal custody to DFACS included the right to determine physical custody; and (4) the

2003 amendment to § 15-11-55 did not reject the statutory definition of legal custody. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006).

Nothing in O.C.G.A. § 15-11-55(a)(2) allows any redefinition of legal custody as defined in O.C.G.A. § 49-5-3(12). Instead, § 15-11-55(a)(2) follows the statutory and legal precedent that the grant of legal custody to the Department of Family and Children Services includes the right to determine physical custody; the 2003 amendment to § 15-11-55 does not reject the statutory definition of legal custody. In the Interest of A.N., 281 Ga. 58, 636 S.E.2d 496 (2006).

Joint legal and physical custody. — The juvenile court exceeded the court’s authority where the court awarded joint legal and physical custody of a deprived child jointly with the Department of Human Resources (DHR) and unrelated third parties when the DHR objected to such arrangement. In re J.N.T., 212 Ga. App. 498, 441 S.E.2d 918 (1994).

Cited in Frances Wood Wilson Found., Inc. v. Bell, 223 Ga. 588, 157 S.E.2d 287 (1967); In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977); W.F. v. State, 144 Ga. App. 523, 241 S.E.2d 631 (1978); In re M.A.F., 254 Ga. 748, 334 S.E.2d 668 (1985); Brown v. Phillips, 178 Ga. App. 316, 342 S.E.2d 786 (1986); Ledford v. State Farm Mut. Auto. Ins. Co., 189 Ga. App. 866, 377 S.E.2d 693 (1989).

RESEARCH REFERENCES

Am. Jur. 2d. — 47 Am. Jur. 2d, Juvenile Courts and Delinquent and Dependent Children, § 20 et seq., 79 Am. Jur. 2d, Welfare Laws, §§ 19, 20.

C.J.S. — 43 C.J.S., Infants, § 15.

49-5-4. Other state departments, agencies, officers, and employees to assist department.

It shall be the duty of all other state departments, agencies, officers, and employees to assure the most effective coordination and use of state resources, personnel, and facilities for the benefit of children and youths and to assist the Department of Human Services in effectuating the purposes of this article by making available to the department, upon request of the board or the commissioner and to the extent permissible by

law, the services, resources, personnel, and facilities of their respective departments and agencies. (Ga. L. 1963, p. 81, § 4; Ga. L. 1982, p. 3, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in this Code section.

JUDICIAL DECISIONS

Cited in *A.C.G. v. State*, 131 Ga. App. 156, 205 S.E.2d 435 (1974); *In re R.D.*, 141 Ga. App. 843, 234 S.E.2d 680 (1977).

49-5-5. Powers and duties of board; rules and regulations for training schools and other facilities.

(a) The board shall perform duties required of it by this article and shall, in addition thereto, be responsible for adoption of all policies and promulgation of all rules and regulations not in conflict with this article that may be necessary and appropriate to the administration of the department, to the accomplishment of the purposes of this article, and to the performance of the duties and functions of the department as set forth in this article.

(b) The board shall establish rules and regulations for the government, operation, and maintenance of all training schools, facilities, and institutions now or hereafter under the jurisdiction and control of the department, bearing in mind at all times that the purpose for existence and operation of such schools, facilities, and institutions and all activities carried on therein shall be to carry out the rehabilitative program provided for by this article and to restore and build up the self-respect and self-reliance of children and youths lodged therein so as to qualify and equip them for good citizenship and honorable employment. (Ga. L. 1963, p. 81, § 6.)

JUDICIAL DECISIONS

Cited in *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

OPINIONS OF THE ATTORNEY GENERAL

Authority over training schools, institutions, and detention centers. — Based upon the fact that O.C.G.A. § 49-5-5 expressly extends the rule-making power of the Board of Human Resources not only to the operation and maintenance of training schools but also to any facility or institution under the jurisdiction and control of the Division for Children and Youth (now Division of

Family and Children Services of the Department of Human Resources), the admission procedures and policies pertaining to regional detention centers are likewise within the discretion of the department. 1971 Op. Att’y Gen. No. 71-161.

Acceptance of children from federal institutions and provision of services. — The State Department of Family and Children

Services (now Division of Family and Children Services of the Department of Human Resources) is authorized to enter into agreements to accept children and youth from the federal penal and corrective institutions and agencies and to provide the children and youth with the services extended by the facilities of the department to those children taken pursuant to Georgia court orders; the conditions and circumstances under which such agreements should be effectuated is a matter within the administrative powers of the board pursuant to this section and can be effectuated by the adoption of such appropriate rules and regulations as the board deems necessary. Adequate compensation for the costs thereof may be collected by the department from the agency transferring the children or youth to the Georgia facilities. 1968 Op. Att'y Gen. No. 68-191.

Fire safety standards for day care centers. — The Board of Human Resources had lawful authority to adopt the 1973 Life Safety Code (National Fire Protection Association standard 101), a comprehensive set of standards that deals with preventing and controlling losses from fire, as part of the rules and regulations for day care centers, and the department has lawful authority to enforce

compliance with code standards. 1976 Op. Att'y Gen. No. U76-6.

Formula for determining allocation of funds to counties. — The State Board for Children and Youth (now Board of Human Resources) has the authority to provide a formula for determining the funds to be allocated and distributed to the counties. 1968 Op. Att'y Gen. No. 68-419.

Limits on amount spent by counties for detention purposes. — The State Board for Children and Youth (now Board of Human Resources) has the power to incorporate in a formula a provision that the funds disbursed for county-owned detention purposes will not exceed the total funds spent by the various counties for detention purposes during the fiscal year involved. 1968 Op. Att'y Gen. No. 68-419.

Imposition of limits on spending based on amount spent in preceding year. — The State Board for Children and Youth (now Board of Human Resources) does not have the authority to provide in a formula that the funds allocated and distributed to a county in one fiscal year will not be in excess of the total funds spent by the county for detention purposes during the preceding year. 1968 Op. Att'y Gen. No. 68-419.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 12, 13.

49-5-6. Merit system to conform to federal standards; power to employ and contract for professional services; employment and dismissal procedures; membership in state retirement system.

(a) The department shall conform to federal standards for a merit system of personnel administration in the respects necessary for receiving federal grants and the board is authorized and empowered to effect such changes as may, from time to time, be necessary in order to comply with such standards.

(b) The department is authorized to employ, on a full or part-time basis, such medical, psychiatric, social work, supervisory, institutional, and other professional personnel and such clerical and other employees as may be necessary to discharge the duties of the department under this chapter. The department is also authorized to contract for such professional services as may be necessary.

(c) Superintendents of training schools and other facilities and institutions now or hereafter under the jurisdiction and control of the department

shall be employed and dismissed for cause by the board on the recommendation of the commissioner. Professional personnel and other employees of such training schools, facilities, and institutions shall be employed and dismissed for cause by the commissioner on the recommendation of the superintendent. All other professional personnel and all other employees of the department under this article shall be employed and dismissed for cause by the commissioner in accordance with such rules and regulations as may be promulgated by the board in regard thereto. Employees of the department under this article shall in all instances be employed and dismissed in accordance with rules and regulations of the State Personnel Administration.

(d) All personnel of the Division of Family and Children Services are authorized to be members of the Employees' Retirement System of Georgia, Chapter 2 of Title 47. All rights, credits, and funds in that retirement system which are possessed by state personnel transferred by provisions of this article to the division, or otherwise had by persons at the time of employment with the division, are continued and preserved, it being the intention of the General Assembly that such persons shall not lose any rights, credits, or funds to which they may be entitled prior to becoming employees of the division. (Ga. L. 1963, p. 81, § 8; Ga. L. 1992, p. 1983, § 26; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" at the end of subsection (c).

49-5-7. Development and administration of public child welfare and youth services.

- (a) The department is designated the exclusive state agency:
 - (1) For development and administration of a comprehensive state plan and program providing public child welfare and youth services provided for in Title IV, Part B, of the federal Social Security Act;
 - (2) For administering, supervising, and discharging all duties required by any other act of Congress and any amendments thereto that may now or hereafter allot federal funds for public child welfare and youth services coming within the scope of this article;
 - (3) For administering and supervising local administration of public child welfare and youth services provided for in this article; and
 - (4) For receiving and expending on behalf of the state all funds which now or hereafter may become available or allotted to this state by virtue of any appropriation or act of Congress or regulation of the federal government, its agencies, and instrumentalities or be appropriated by the General Assembly for public child welfare and youth services to be

administered by the department as provided for in this article. The department is authorized to use so much of funds as may be appropriated by the General Assembly for the purpose of matching federal grants for public child welfare and youth services provided for in this article as may be necessary to secure such grants, derive full advantage to the state of benefits contemplated under the terms of such grants, and comply with the terms of such grants.

(b) County or district departments are designated the local public agencies to administer locally the state plan and program for public child welfare and youth services to be developed in accordance with paragraph (1) of subsection (a) of this Code section and other public child welfare and youth services provided for in this article and shall administer them in accordance with rules and regulations to be established by the board. The department shall aid, assist, supervise, coordinate, and direct the administering of such public child welfare and youth services by county or district departments and enforce the rules and regulations of the board in regard thereto.

(c) The cost of all child welfare benefits and services and the cost of administration thereof, authorized by this article, shall be met from such funds as shall be made available therefor from federal and state appropriations. No county shall hereafter be required to participate in the cost of any child welfare benefit or service or in the cost of administration thereof. For the purpose of this subsection, "cost of administration" means salaries and traveling expenses of the county or district director and other employees of the staff of the county or district department engaged in the performance of child welfare and youth services provided for under this article.

(d) Public child welfare and youth services similar to those to be provided by the department under this article and pursuant to Title IV, Part B, of the federal Social Security Act shall, by cooperative agreement or contract by and between the Department of Human Services and county or district departments of family and children services be made available to recipients of and persons who have been or are likely to become recipients of assistance under the temporary assistance for needy families program provided for in Article 5 of Chapter 4 of this title and related federal laws, to include foster home care and other child care referred to in Section 408 of Title IV of the federal Social Security Act. The department is designated the "state public welfare agency" referred to in Sections 408(a) and (f) and 421 of Title IV of the federal Social Security Act.

(e) The commissioner shall, in developing and administering the state plans and programs referred to in paragraph (1) of subsection (a) and in subsection (d) of this Code section, provide by cooperative agreement and contract where necessary for coordination of such plans and programs with a view toward providing welfare and related services on a comprehensive

basis that will best promote the welfare of children and youths and their families and best effectuate and coordinate effective implementation and administration of both such plans and programs at the local level of administration.

(f) Nothing in this article is intended to conflict with any federal law or result in loss of eligibility of the department or any other department of state government to any federal funds. In case such a conflict or loss of federal funds should occur by virtue of enactment of any portion of this article, then such portion of this article in conflict with such federal law or otherwise causing loss of such funds is declared to be of no effect and void. The board is authorized and empowered in such event to take such action as may be necessary and to effect such changes within the department as may be necessary to prevent loss of such funds to the department or any other department of state government affected and to secure to the same the full benefit of the federal laws. (Ga. L. 1963, p. 81, § 9; Ga. L. 1969, p. 996, §§ 1, 3; Ga. L. 1970, p. 451, § 3; Ga. L. 1972, p. 1251, § 1; Ga. L. 1973, p. 563, § 1; Ga. L. 1974, p. 1455, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1985, p. 283, § 1; Ga. L. 1986, p. 277, § 2; Ga. L. 1987, p. 3, § 49; Ga. L. 1992, p. 1983, § 27; Ga. L. 1993, p. 91, § 49; Ga. L. 1997, p. 1021, § 7; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the first sentence of subsection (d).

Editor's notes. — Ga. L. 1997, p. 1021, § 10, not codified by the General Assembly, provides for severability.

U.S. Code. — Title IV, Part B of the federal Social Security Act, referred to in paragraph (a)(1) and subsection (d) of this Code section, is codified at 42 U.S.C. §§ 620 through 626. Sections 408 and 421 of Title

IV of the federal Social Security Act, referred to in subsection (d) of this Code section, are codified at 42 U.S.C. §§ 608 and 621, respectively.

Law reviews. — For article recommending more consistency in age requirements of laws pertaining to the welfare of minors, see 6 Ga. St. B.J. 189 (1969). For article discussing venue problems in juvenile court practice and suggesting solutions, see 23 Mercer L. Rev. 341 (1972). For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 284 (1997).

JUDICIAL DECISIONS

Applicability of section to convicted felons under 18. — This section was not intended to exclude probationary sentences for convicted felons under 18 years of age. *Lockett v. State*, 143 Ga. App. 629, 239 S.E.2d 238 (1977).

Department of Human Resources (now Children and Youth Services) loses the right to custody at age 17, where a juvenile is convicted of a felony in the superior court.

W.F. v. State, 144 Ga. App. 523, 241 S.E.2d 631 (1978).

Cited in *Mathis v. State*, 231 Ga. 401, 202 S.E.2d 73 (1973); *Brown v. State*, 235 Ga. 353, 219 S.E.2d 419 (1975); *Carrindine v. Ricketts*, 236 Ga. 283, 223 S.E.2d 627 (1976); *Allen v. Ricketts*, 236 Ga. 294, 223 S.E.2d 633 (1976); *In re R.D.*, 141 Ga. App. 843, 234 S.E.2d 680 (1977).

OPINIONS OF THE ATTORNEY GENERAL

ANALYSIS

GENERAL CONSIDERATION

COURT JURISDICTION AND RESPONSIBILITIES

DEPARTMENT'S CUSTODY AND RESPONSIBILITIES

PAROLE ELIGIBILITY

LOSS OF CIVIL RIGHTS

General Consideration

Payment of travel expenses authorized. —

Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1, 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L. 1963, p. 81, §§ 9 and 24 (see O.C.G.A. §§ 49-2-6 and 49-5-7 et seq.) must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

Effect on power of superior court. —

Ga. L. 1972, p. 1251, § 11 (see O.C.G.A. § 49-5-7) sets apart a defined class of offenders and directs how those offenders shall be punished for the offense; in doing this, the power of any superior court to try an individual under the age of 17 for any given crime is in no way affected; that section is like, in this respect, Ga. L. 1972, p. 582, § 1 (see O.C.G.A. § 42-5-51) which provides that the commissioner of corrections and not the sentencing court designates the place of confinement of any individual within its jurisdiction. 1972 Op. Att'y Gen. No. 72-3.

Legislature dictates manner in which youthful convicts will be punished. — This section treats individuals who have already been convicted by a court of a particular crime and concerns only the manner in which these particular convicts shall be punished; as to the particular punishment which may be imposed following conviction of a crime, the matter is not within the province of the judiciary, rather the legislature has exclusive jurisdiction in the matter of dictating how crimes shall be punished. 1972 Op. Att'y Gen. No. 72-3.

Parole power of State Board of Pardons and Paroles. — Within the one-year period

from the original date of commitment, the trial court has the authority, under former subparagraph (a)(5)(B) of this section, to modify the court's original sentence, but the State Board of Pardons and Paroles also has the authority, subject to the board's own guidelines, to parole persons incarcerated pursuant to former subparagraph (a)(5)(A) of this section. 1980 Op. Att'y Gen. No. 80-142.

The State Board of Pardons and Paroles need not have the concurrence and recommendation of the director of the Division for Children and Youth before the board can consider persons incarcerated under former subparagraph (a)(5)(A) of this section for parole. 1980 Op. Att'y Gen. No. 80-142.

Word "parole" in former subparagraph (a)(5)(B) of this section does not relate to performance by State Board of Pardons and Paroles of the board's duties but rather relates to the modification of the sentence by the committing court so as to "release or parole" those persons incarcerated pursuant to former subparagraph (a)(5)(A) of this section. 1980 Op. Att'y Gen. No. 80-142.

Court Jurisdiction and Responsibilities

Except in the case of capital crimes, juvenile courts generally have exclusive, original jurisdiction of children and may not transfer those children to other courts for criminal proceedings unless the child is 15 or older; a person will not come to the Department of Offender Rehabilitation (now Department of Corrections) under the exceptions of former subparagraph (a)(5)(A) of this section, unless the person is less than 17, and unless the person is at least 13 in the case of a capital crime or is at least 15 in the case of other crimes. 1974 Op. Att'y Gen. No. 74-88.

Commitment to the Department of Offender Rehabilitation (now Department of Corrections) is mandatory if the child is convicted of a capital crime under Ga. L.

1974, p. 1455, § 1 (see O.C.G.A. § 49-5-7); it is a discretionary decision for the court in the other two situations under which Ga. L. 1974, p. 1455, § 1 (see O.C.G.A. §§ 49-5-7 and former 49-5-11) authorize commitment to the department. 1974 Op. Att'y Gen. No. 74-88.

Determination of previous adjudications required under section is judicial function. — The different ages referred to in former subparagraph (a)(5)(A) of Ga. L. 1973, p. 563, § 1 and Ga. L. 1971, p. 709, § 1 (see O.C.G.A. §§ 49-5-7 and 15-11-39) are not in conflict with one another, and the determination of previous adjudications required in one aspect of former subparagraph (a)(5)(A) is a judicial function rather than an administrative function. 1974 Op. Att'y Gen. No. 74-88.

Department should notify committing court of its responsibility for one-year case review. — The primary responsibility for a one-year case review under this section rests with the committing court; as a practical matter, the Division for Children and Youth (now Department of Children and Youth Services) should notify the committing court of this responsibility. 1970 Op. Att'y Gen. No. 70-65.

Department's Custody and Responsibilities

Custody provision not unconstitutional. — The former provision in this section providing for the custody of convicted misdemeanants and felons under the age of 17 was not unconstitutional. 1972 Op. Att'y Gen. No. 72-3.

Exclusive state agency for acceptance and incarceration of misdemeanants and noncapital felons under age 17. — As a general rule, the legislature has designated the Board of Offender Rehabilitation (now Department of Corrections) as the sole agency for the reception and assignment of all convicted misdemeanants and felons. A notable exception to this general provision provides that the Division for Children and Youth (now Department of Children and Youth Services) is designated the exclusive state agency for the acceptance and incarceration of all misdemeanants and felons under the age of 17 years; provided, however, that those felons convicted of a capital felony shall only be sentenced into the custody of the Department of Offender Rehabilitation

(now Department of Corrections). 1972 Op. Att'y Gen. No. 72-3.

Responsibility for children convicted of noncapital crimes ends at age 17. — The Department of Human Resources' (now Department of Children and Youth Services') legal responsibility for children under the age of 17 who have been convicted of noncapital crimes ends when the children reach the age of 17 at which time the children must either be released or transferred to the Department of Offender Rehabilitation (now Department of Corrections) in accordance with the court's order. 1974 Op. Att'y Gen. No. 74-139.

Notification of sentencing court prior to child's seventeenth birthday. — Even if the child is committed to the Department of Human Resources (now Department of Children and Youth Services) before the child's seventeenth birthday, the department cannot confine the child beyond that date and the department's legal responsibility for the child terminates on that day; prior to a committed child's seventeenth birthday the department should notify the sentencing court that a further disposition or a release must be made. 1974 Op. Att'y Gen. No. 74-139.

Transfer of youth to Department of Corrections. — A 16-year old originally committed to the department may be transferred on the child's seventeenth birthday to the Department of Offender Rehabilitation (now Department of Corrections) by order of the committing court under the provisions of Ga. L. 1972, p. 592, § 1 (see O.C.G.A. Ch. 7, T. 42); the offender's term of custody should be computed from the date of original conviction. 1975 Op. Att'y Gen. No. 75-47.

Effect of criminal sentence imposed subsequent to unexpired commitment order. — Department of Offender Rehabilitation (now Department of Corrections) properly has custody of individual under provisions of criminal sentence which was imposed subsequent to unexpired order of commitment; at the expiration of the criminal sentence, alternative arrangements for custody should be made for the remainder of the term of commitment. 1975 Op. Att'y Gen. No. 75-20.

Crimes by children punishable by life imprisonment or death. — Kidnapping, not being punishable by death or imprisonment for life, is not an offense which requires the

Department's Custody and Responsibilities (Cont'd)

offender under 17 years of age to be placed in the sole custody of the Department of Offender Rehabilitation (now Department of Corrections); where the offender under 17 years of age is convicted of kidnapping for ransom or kidnapping in which the victim receives bodily injury, both being offenses punishable by life imprisonment or death, the offender shall be sentenced only into the custody of the Department of Offender Rehabilitation (now Department of Corrections). 1975 Op. Att'y Gen. No. 75-73.

Parole Eligibility

Youth's sentence begins to run when placed under custody of department. — Where custody of a felon 16 years of age is transferred by court order from the department to the Department of Offender Rehabilitation (now Department of Corrections), the sentence begins to run when the youth is placed under the custody of the Department of Human Resources. 1975 Op. Att'y Gen. No. 75-78.

Parole eligibility includes time spent in custody of department. — Because a sentence begins running from the time of incarceration under the department, the prisoner must serve one-third of the time to which the prisoner has been sentenced, including the time the prisoner has spent in the cus-

tody of the department before becoming eligible for parole. 1975 Op. Att'y Gen. No. 75-78.

Good-time computations should not include time spent incarcerated under department. — The time spent by a felon incarcerated under the department is not to be considered by the Board of Corrections when computing good-time allowances; rather, good-time should be computed from the date the felon is received by an institution under the board's jurisdiction. 1975 Op. Att'y Gen. No. 75-78.

Loss of Civil Rights

Child convicted of crime involving moral turpitude. — A person convicted of a crime before reaching the age of 17 loses the right to vote if convicted of a crime involving moral turpitude even though the person is committed to the department, rather than sentenced to the Board of Corrections; the right to vote and other civil and political rights, however, may be restored by the Board of Pardons and Paroles. 1975 Op. Att'y Gen. No. 75-17.

Youth loses voting right if crime committed is punishable by imprisonment. — Where a youth has not been imprisoned in a penitentiary but has been committed to the department, the constitutional disqualification of the right to vote attaches if the crime committed is punishable by imprisonment. 1975 Op. Att'y Gen. No. 75-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 8 et seq.

C.J.S. — 43 C.J.S., Infants, § 8.

ALR. — Authority of court to order juvenile delinquent incarcerated in adult penal institution, 95 ALR3d 568.

Parent's obligation to support unmarried

minor child who refuses to live with parent, 98 ALR3d 334.

Actions under 42 U.S.C.S. § 1983 for violations of Adoption Assistance and Child Welfare Act (42 U.S.C.S. §§ 620 et seq. and 670 et seq.), 93 ALR Fed. 314.

49-5-8. Powers and duties of department.

(a) The Department of Human Services is authorized and empowered, through its own programs and the programs of county or district departments of family and children services, to establish, maintain, extend, and improve throughout the state, within the limits of funds appropriated therefor, programs that will provide:

(1) Preventive services as follows:

(A) Collecting and disseminating information about the problems of children and youths and providing consultative assistance to groups, public and private, interested in developing programs and services for the prevention, control, and treatment of dependency, deprivation, and delinquency among the children of this state; and

(B) Research and demonstration projects designed to add to the store of information about the social and emotional problems of children and youths and improve the methods for dealing with these problems;

(2) Child welfare services as follows:

(A) Casework services for children and youths and for mothers bearing children out of wedlock, whether living in their own homes or elsewhere, to help overcome problems that result in dependency, deprivation, or delinquency;

(B) Protective services that will investigate complaints of deprivation, abuse, or abandonment of children and youths by parents, guardians, custodians, or persons serving in loco parentis and, on the basis of the findings of such investigation, offer social services to such parents, guardians, custodians, or persons serving in loco parentis in relation to the problem or bring the situation to the attention of a law enforcement agency, an appropriate court, or another community agency;

(C) Supervising and providing required services and care involved in the interstate placement of children;

(D) Homemaker service, or payment of the cost of such service, when needed due to the absence or incapacity of the mother;

(E) Boarding care, or payment of maintenance costs, in foster family homes or in group-care facilities for children and youths who cannot be adequately cared for in their own homes;

(F) Boarding care or payment of maintenance costs for mothers bearing children out of wedlock prior to, during, and for a reasonable period after childbirth; and

(G) Day-care services for the care and protection of children whose parents are absent from the home or unable for other reasons to provide parental supervision;

(3) Services to courts, upon their request, as follows:

(A) Accepting for casework services and care all children and youths whose legal custody is vested in the department by the court;

(B) Providing shelter or custodial care for children prior to examination and study or pending court hearing;

(C) Making social studies and reports to the court with respect to children and youths as to whom petitions have been filed; and

(D) Providing casework services and care or payment of maintenance costs for children and youths who have run away from their home communities within this state, or from their home communities in this state to another state, or from their home communities in another state to this state; paying the costs of returning such runaway children and youths to their home communities; and providing such services, care, or costs for runaway children and youths as may be required under Chapter 3 of Title 39;

(4) Regional group-care facilities for the purpose of:

(A) Providing local authorities an alternative to placing any child in a common jail;

(B) Shelter care prior to examination and study or pending a hearing before juvenile court;

(C) Detention prior to examination and study or pending a hearing before juvenile court; and

(D) Study and diagnosis pending determination of treatment or a hearing before juvenile court;

(5) Facilities designed to afford specialized and diversified programs, such as forestry camps, ranches, and group residences, for the care, treatment, and training of children and youths of different ages and different emotional, mental, and physical conditions;

(6) Regulation of child-placing agencies, child-caring institutions, and maternity homes by:

(A) Establishing rules and regulations for and providing consultation on such rules and regulations for all such agencies, institutions, and homes; and

(B) Licensing and inspecting periodically all such agencies, institutions, and homes to ensure their adherence to established standards as prescribed by the department;

(7) Adoption services, as follows:

(A) Supervising the work of all child-placing agencies when funds are made available;

(B) Providing services to parents desiring to surrender children for adoption as provided for in adoption statutes;

(C) Providing care or payment of maintenance costs for mothers bearing children out of wedlock and children being considered for adoption;

(D) Inquiring into the character and reputation of persons making application for the adoption of children;

(E) Placing children for adoption;

(F) Providing financial assistance to families adopting children once the child has been placed for adoption, determined eligible for assistance, and the adoption assistance agreement has been signed prior to the finalization of the adoption by all parties. Financial assistance may only be granted for hard-to-place children with physical, mental, or emotional disabilities or with other problems for whom it is difficult to find a permanent home. Financial assistance may not exceed 100 percent of the amount that would have been paid for boarding such child in a family foster home and for special services such as medical care not available through insurance or public facilities. Such supplements shall only be available to families who could not provide for the child adequately without continued financial assistance. The department may review the supplements paid at any time but shall review them at least annually to determine the need for continued assistance;

(G) Providing payment to a licensed child-placing agency which places a child with special needs who is under the jurisdiction of the department for adoption. Payment may not exceed \$5,000.00 for each such adoption arranged by an agency. The board shall define the special needs child. One-half of such payment shall be made at the time of placement and the remaining amount shall be paid when the adoption is finalized. If the adoption disrupts prior to finalization, the state shall be reimbursed by the child-placing agency in an amount calculated on a prorated basis based on length of time the child was in the home and the services provided; and

(H) Providing payment to an agency which recruits, educates, or trains potential adoptive or foster parents for preparation in anticipation of adopting or fostering a special needs child. The board shall define the special needs child and set the payment amount by rule and regulation. Upon appropriate documentation of these preplacement services in a timely manner, payments as set by the board shall be made upon enrollment of each potential adoptive or foster parent for such services;

(8) Staff development and recruitment programs through in-service training and educational scholarships for personnel as may be necessary to assure efficient and effective administration of the services and care for children and youths authorized in this article. The department is

authorized to disburse state funds to match federal funds in order to provide qualified employees with graduate or postgraduate educational scholarships in accordance with rules and regulations adopted by the board pursuant to Article VIII, Section VII, Paragraph I of the Constitution of Georgia; and

(9) Miscellaneous services, such as providing all medical, hospital, psychiatric, surgical, or dental services or payment of the costs of such services as may be considered appropriate and necessary by competent medical authority to those children subject to the supervision and control of the department without securing prior consent of parents or legal guardians.

(b) The department is authorized to perform such other duties as may be required under related statutes.

(c)(1) As used in paragraph (2) of this subsection, the term “state” means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or any territory or possession of or territory or possession administered by the United States.

(2) The Department of Human Services is authorized to enter into interstate compacts, on behalf of this state, with other states to provide for the reciprocal provision of adoption assistance services.

(3) The purpose of paragraphs (1) and (2) of this subsection is to comply with the requirements of the Adoption Assistance and Child Welfare Act of 1980 (P.L. 96-272) and Part E of Title IV of the Social Security Act and to assure that recipients of adoption assistance in Georgia who change their residences to other states receive adoption assistance services, other than adoption assistance payments, from their new states of residence. (Ga. L. 1963, p. 81, § 11; Ga. L. 1969, p. 939, § 1; Ga. L. 1971, p. 351, § 1; Ga. L. 1973, p. 946, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 3, § 65; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 518, § 1; Ga. L. 1988, p. 1945, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1992, p. 1983, § 28; Ga. L. 1993, p. 1969, § 3; Ga. L. 1994, p. 409, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 1997, p. 1697, § 1; Ga. L. 2004, p. 645, § 8; Ga. L. 2009, p. 100, § 1/HB 237; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, in subparagraph (a)(7)(F), in the first sentence, deleted “after the consummation of a legal adoption” following “financial assistance” near the beginning and substituted “once the child has been placed for adoption, determined eligible for assistance, and the adoption assistance agreement has been signed prior to the finalization of the adop-

tion by all parties” for “who would otherwise remain in foster care at state expense” at the end and, in the third sentence, inserted “that would have been” and inserted “in a family foster home”. The second 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in the introductory language of subsection (a), and in paragraph (c)(2).

Cross references. — Interstate Compact on the Placement of Children, Ch. 4, T. 39.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, in paragraph (c)(3) a repetitive “96-” was deleted preceding “96-272”.

Pursuant to Code Section 28-9-5, in 1990, “Part E of Title IV” was substituted for “Title IVE” in paragraph (c)(3).

Editor’s notes. — Ga. L. 1993, p. 1969, contains two sections numbered as “1”. The language quoted below is from the first Section 1 of that Act.

Ga. L. 1993, p. 1969, § 1, not codified by the General Assembly, provides: “The General Assembly estimates that up to \$6 million will be saved on an annual basis when the provisions of Code Sections 49-4-112, 49-4-113, and 49-4-115 are fully implemented for complete fiscal years. It is the intent of the General Assembly that such cost savings realized by the implementation of these three Code sections be redirected into the Aid to Families with Dependent Children program in the following priorities:

“(1) Extension of transitional Medicaid for up to 24 months provided a federal waiver is obtained;

“(2) Expansion of PEACH program slots; and

“(3) Child care assistance for low-income working families.”

U.S. Code. — The federal Adoption Assistance and Child Welfare Act of 1980, referred to in this Code section, is codified principally at 42 U.S.C. § 602 et seq.

Part E of Title IV of the federal Social Security Act, referred to in this Code section, is codified at 42 U.S.C. 670 et seq.

Administrative rules and regulations. — Rules and regulations for child placing agencies, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Office of Regulatory Services, Chapter 290-9-2.

Law reviews. — For article criticizing parental rights doctrine and advocating best interests of child doctrine in parent-third party custody disputes, see 27 Emory L.J. 209 (1978).

For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 258 (1994). For note, “The Georgia Tort Claims Act: A License for Negligence in Child Depprivation Cases?,” see 18 Ga. St. U.L. Rev. 795 (2002).

JUDICIAL DECISIONS

Regional youth development centers. — The department has authority and responsibility to establish policies and standards governing regional youth development centers. *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

Juvenile courts are not to determine whether a Department of Human Resources

facility is up to standard. *Jones v. State*, 134 Ga. App. 611, 215 S.E.2d 483 (1975).

Cited in *Sanchez v. Walker County Dep’t of Family & Children Servs.*, 237 Ga. 406, 229 S.E.2d 66 (1976); *Department of Human Resources v. Ledbetter*, 153 Ga. App. 416, 265 S.E.2d 337 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Payment of travel expenses authorized. — Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1, 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department’s express statutory duties as set forth in Ga. L. 1963, p. 81, §§ 9 and 24 (see O.C.G.A. §§ 49-2-6 and 49-5-7 et seq.) must also be an implied power, such disbursement being incidental to and reasonably necessary to the

accomplishment of the department’s purpose, duties, and responsibilities. 1963-65 Op. Att’y Gen. p. 320.

School official not liable for good faith involvement. — A school official would not be held liable in a legal action founded upon the official’s good faith reference of a child neglect, abuse, or abandonment situation to a county department of family and children services for investigation, or, upon the official’s assistance in such investigation by permitting the child to be interviewed at the school or in the offices of the county depart-

ment during school hours. 1963-65 Op. Att'y Gen. p. 746.

Establishment of admission or discharge policies which negate court detention orders. — The department does not have the authority to establish policies for admission to or discharge from regional youth development centers which negate detention orders of the juvenile court or superior court; however, the department does have the authority to establish standards and policies supplementary to the detention orders. 1974 Op. Att'y Gen. No. 74-139.

County departments to provide medical services. — This section authorizing the Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) to provide medical services, or the cost of such services, to children subject to the department's "supervision and control," would apply to children in the custody of county departments of family and children services. 1971 Op. Att'y Gen. No. 71-138.

"Supervision and control" over children committed to county departments. — Any child committed to the custody of a county department of family and children services is under the "supervision and control" of the Division for Children and Youth (now Department of Children and Youth Services). 1971 Op. Att'y Gen. No. 71-138.

Responsibility of department to transport juveniles to departmental facilities. — It is the responsibility, including the payment of

the cost therefor, of the department to transport juveniles, which have been adjudged to be delinquent and committed to the department, from regional youth development centers to state centers inasmuch as both regional and state centers are part of the total facilities of the department which have been established for the care, treatment, and rehabilitation of juveniles committed to the custody of the department. 1969 Op. Att'y Gen. No. 69-360.

Department authorized to contract with counties for land purchases or transfers. — The Division for Children and Youth (now Department of Children and Youth Services) is authorized to contract with a county for the purchase or transfer of land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

Department may contract with a county to construct and equip a temporary care facility for youths, pending juvenile delinquency proceedings, provided that funds appropriated from the Governor's Emergency Fund do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-119.

Parents' consent to placement of children without legal action. — The department may request that parents consent to placement of their children outside the family home without the department instituting legal action as long as requirements for voluntary placement are met. 1996 Op. Att'y Gen. No. U96-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Adoption, § 31. 23 Am. Jur. 2d, Desertion and Nonsupport, § 29 et seq. 41 Am. Jur. 2d, Illegitimate Children, § 1. 42 Am. Jur. 2d, Infants, § 16 et seq.

C.J.S. — 2 C.J.S., Adoption, §§ 1 et seq., 49. 43 C.J.S., Infants, §§ 4, 5, 16 et seq. 67A C.J.S., Parent and Child, § 359 et seq.

ALR. — Construction and application of

agreement by medical or social work student to work in the particular position or at particular location in exchange for financial aid in meeting costs of education, 83 ALR3d 1273.

Parent's obligation to support unmarried minor child who refuses to live with parent, 98 ALR3d 334.

49-5-9. Use of public and private institutions and agencies; inspections; examination and control of children not in department's facilities.

(a) The department is authorized to make use of law enforcement detention, supervisory, medical, educational, and other public or private facilities, institutions, and agencies within the state for the purposes of this

article; provided, however, that this shall not give the department authority to transfer any child or youth under its custody and control to any penal institution in the state without due process of law. When funds are available, the department may enter into agreements with appropriate private or public officials of private or public institutions and agencies for separate care and special treatment of children and youths subject to the control of the department.

(b) The department is given the right and is required to inspect periodically all public and private institutions and agencies whose facilities it is using. Every institution and agency, whether public or private, is required to afford the department reasonable opportunity to examine or consult with children and youths committed to the department who are for the time being in the custody of the institution or agency.

(c) Placement of a child or youth by the department in any institution or agency not operated by the department or the release of such child or youth from such an institution or agency shall not terminate the control of the department over such child or youth. No child or youth placed in such institution or under such an agency may be released by the institution or agency without the approval of the department. (Ga. L. 1963, p. 81, § 12.)

JUDICIAL DECISIONS

Cited in In re R.D., 141 Ga. App. 843, 234 S.E.2d 680 (1977).

OPINIONS OF THE ATTORNEY GENERAL

Payment of travel expenses authorized. — 1963, p. 81, §§ 1, 9 and 24 (see O.C.G.A. §§ 49-2-6, 49-5-7, 49-5-9 and 49-5-10 [repealed] (now see §§ 49-4A-8 and 49-5-1), must also be an implied power, such disbursement being incidental to and reasonably necessary to the accomplishment of the department's purpose, duties, and responsibilities. 1963-65 Op. Att'y Gen. p. 320.

Inasmuch as the creation of an advisory council was within the scope of Ga. L. 1937, p. 355 (see O.C.G.A. §§ 49-2-1, 49-2-7), it follows that the payment of the out-of-pocket travel expenses to enable the council to function efficiently and thus assist in the accomplishment of the department's express statutory duties as set forth in Ga. L.

RESEARCH REFERENCES

C.J.S. — 78 C.J.S., Schools and School Districts, § 507 et seq.

49-5-10. Commitment of delinquent or unruly children to department; procedures; handling and treatment; escape and apprehension; release; termination of control.

Reserved. Repealed by Ga. L. 1992, p. 1983, § 29, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1963, p. 81, § 13; Ga. L. 1976, p. 1066, § 1; Ga. L. 1978, p. 1510, §§ 1, 2; Ga. L. 1980, p. 1046, § 1; Ga. L. 1981, Ex. Sess., p. 8; Ga. L. 1982, p. 3, § 49; Ga. L. 1983, p. 538, § 1; Ga. L. 1983, p. 539, § 2; Ga. L. 1984, p. 22, § 49; Ga. L. 1990, p. 540, § 3; and Ga. L. 1990, p. 1930, § 8.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — Juvenile Courts and Delinquent and Dependent Children, § 2.
15A Am. Jur. Pleading and Practice Forms,

49-5-10.1. Temporary transfer of at-risk unruly or delinquent children to Department of Corrections; procedure; review; discharge.

Repealed by Ga. L. 1997, p. 559, § 1, effective July 1, 1997.

Editor's notes. — Ga. L. 1997, p. 1453, §§ 1 and 3 purported to make editorial changes to this Code section. This Code section was based on Code 1981, § 49-5-10.1, enacted by Ga. L. 1990, p. 1930, § 9; Ga. L. 1992, p. 1983, § 30.

49-5-11. Escape from a youth detention center.

Reserved. Repealed by Ga. L. 1992, p. 1983, § 31, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1969, p. 996, § 1; Ga. L. 1972, p. 1251, § 1; Ga. L. 1973, p. 563, § 1; Ga. L. 1974, p. 1455, § 1; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1985, p. 283, § 1.

49-5-12. Licensing and inspection of child welfare agencies; standards; revocation or refusal of license; penalties; violations.

(a) As used in this Code section, the term "child welfare agency" means any child-caring institution, child-placing agency, children's transition care center, or maternity home.

(b) All child welfare agencies, as defined in subsection (a) of this Code section, shall be licensed or commissioned annually by the department in accordance with procedures, standards, rules, and regulations to be established by the board. The board shall develop and publish rules and regulations for licensing or commissioning of child welfare agencies. Child welfare agencies electing to be commissioned rather than licensed shall operate in accordance with the same procedures, standards, rules, and regulations for licensing of child welfare agencies. A license issued to a child-placing agency shall be deemed approval of all foster family homes approved, supervised, and used by the licensed child-placing agency as a part of its work, subject to this article and rules and regulations of the board.

(c) The department shall assist applicants or licensees or persons holding commissions in meeting rules and regulations of the department for child welfare agencies and, if a licensee or person holding a commission is, for any reason, denied renewal of a license or commission or if a license

or commission is revoked or if any applicant for a license or commission cannot meet department rules and regulations for child welfare agencies, the department shall assist in planning the placement of children, if any, in the custody of such child welfare agency in some other licensed or commissioned child welfare agency or assist in returning them to their own homes or in making any other plans or provisions as may be necessary and advisable to meet the particular needs of the children involved.

(d) Application for a license or commission shall be made to the department upon forms furnished by the department. Upon receipt of an application for a license or commission and upon presentation by the applicant of evidence that the child welfare agency meets the rules and regulations prescribed by the department, the department shall issue such child welfare agency a license or commission for no more than one year.

(e) If the department finds that any child welfare agency applicant does not meet rules and regulations prescribed by the department but is attempting to meet such rules and regulations, the department may, in its discretion, issue a temporary license or commission to such child welfare agency, but such temporary license or commission shall not be issued for more than a one-year period. Upon presentation of satisfactory evidence that such agency is making progress toward meeting prescribed rules and regulations of the department, the department may, in its discretion, reissue such temporary license or commission for one additional period not to exceed one year. As an alternative to a temporary license or commission, the department, in its discretion, may issue a restricted license or commission which states the restrictions on its face.

(f) The department shall refuse a license or commission upon a showing of:

(1) Noncompliance with the rules and regulations for child welfare agencies as adopted by the Board of Human Services which are designated in writing to the facilities as being related to children's health and safety;

(2) Flagrant and continued operation of an unlicensed or uncommissioned facility in contravention of the law; or

(3) Prior license or commission denial or revocation within one year of application.

(g) All licensed or commissioned child welfare agencies shall prominently display the license or commission issued to such agency by the department at some point near the entrance of the premises of such agency that is open to view by the public.

(h) The department's action revoking or refusing to renew or issue a license or commission required by this Code section shall be preceded by notice and opportunity for a hearing and shall constitute a contested case

within the meaning of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that only 30 days’ notice in writing from the commissioner’s designee shall be required prior to license or commission revocation and except that hearings held relating to such action by the department may be closed to the public if the hearing officer determines that an open hearing would be detrimental to the physical or mental health of any child who will testify at that hearing.

(i) Child-caring institutions and child-placing agencies, when licensed in accordance with this Code section, may receive needy or dependent children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care. Parents, guardians, custodians, or persons serving in loco parentis to such children may sign releases or agreements giving to such institutions or agencies custody and control over such children during the period of care. Children’s transition care centers may receive medically fragile children from their parents, guardians, custodians, or persons serving in loco parentis for special, temporary, or continued care to facilitate transitions from a hospital or other facility to a home or other appropriate setting.

(i.1) A children’s transition care center shall serve no more than six children per residence or 16 children per campus at a time. Children’s transition care center services shall be available to all families in this state, including those whose care is paid for through the Department of Community Health or the Department of Human Services or by insurance companies that cover home health care services or private duty nursing care in the home. Each children’s transition care center location shall be physically separate and apart from any other facility licensed by the Department of Human Services under this chapter and shall provide one or more of the following services: respite care, registered nursing or licensed practical nursing care, transitional care for the facilitation of transitions to a home or other appropriate setting and reunion of families, medical day care, weekend camps, and diagnostic studies typically done in the home setting.

(j) Child-placing agencies, in placing children in foster family homes, shall safeguard the welfare of such children by thoroughly investigating each such home and the character and reputation of the persons residing therein and shall adequately supervise each home during the period of care. All children placed in foster family homes shall, as far as is practicable, be placed with persons of the same religious faith as the children themselves or the children’s parents.

(k) It shall be the duty of the department to inspect at regular intervals all licensed or commissioned child welfare agencies within the state, including foster family homes used by such child-placing agencies. The department shall have right of entrance, privilege of inspection, and right of access to all children under the care and control of the licensee or commissionee.

(l) If any flagrant abuses, derelictions, or deficiencies are made known to the department or its duly authorized agents during their inspection of any child welfare agency or if, at any time, such are reported to the department, the department shall immediately investigate such matters and take such action as conditions may require.

(m) If abuses, derelictions, or deficiencies are found in the operation and management of any child welfare agency, they shall be brought immediately to the attention of the management of such agency; and if correctable, but not corrected within a reasonable time, the department shall revoke the license or commission of such agency in the manner prescribed in this Code section.

(n) The department may require periodic reports from child welfare agencies in such forms and at such times as the department may prescribe.

(o) Child welfare agencies and other facilities and institutions wherein children and youths are detained which are operated by any department or agency of state, county, or municipal government shall not be subject to licensure under this Code section, but the department may, through its authorized agents, make periodic inspections of such agencies, facilities, and institutions. Reports of such inspections shall be made privately to the proper authorities in charge of such agencies, facilities, or institutions. The department shall cooperate with such authorities in the development of standards that will adequately protect the health and well-being of all children and youths detained in such agencies, facilities, and institutions or provided care by them. The department may recommend changes in programs and policies and if, within a reasonable time, the standards established by the department and the recommendations of the department are not met, it shall be the duty of the commissioner to make public in the community in which such agency, facility, or institution is located the report of the above-mentioned inspection and the changes recommended by the department. If any serious abuses, derelictions, or deficiencies are found and are not corrected within a reasonable time, the commissioner shall report them in writing to the Governor.

(p) Any child welfare agency that shall operate without a license or commission issued by the department shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$50.00 nor more than \$200.00 for each such offense. Each day of operation without a license or commission shall constitute a separate offense.

(q) No person, official, agency, hospital, maternity home, or institution, public or private, in this state shall receive or accept a child under 17 years of age for placement or adoption or place such a child, either temporarily or permanently, in a home other than the home of the child's relatives without having been licensed or commissioned by the department. Notwithstanding the provisions of Code Section 49-5-12.1, violation of this

subsection shall be punishable by a fine of not less than \$100.00 nor exceeding \$500.00 for each offense. Nothing in this Code section shall be construed to prohibit a properly licensed attorney at law from providing necessary legal services and counsel to parties engaged in or contemplating adoption proceedings. Nothing in this Code section shall be construed to prohibit an individual seeking to:

(1) Adopt a child or children from receiving or accepting a child or children in the individual's home in anticipation of filing a petition for adoption under Article 1 of Chapter 8 of Title 19; or

(2) Have that individual's child or children placed for adoption from placing that individual's child or children in the home of an individual who is not related to the child or children in anticipation of the individual's initiation of adoption proceedings pursuant to Article 1 of Chapter 8 of Title 19.

(r) The department may, without regard to the availability of other remedies, including administrative remedies, seek an injunction against the continued operation of a child welfare agency without a license or commission or the continued operation of a child welfare agency in willful violation of this article or of any regulation of the department or in violation of any order of the board.

(s) The term "licensed child welfare agency" shall include a commissioned child welfare agency and any references in this Code to a licensed child welfare agency, including criminal, administrative, and civil provisions applicable to licensed child welfare agencies, shall include and apply to commissioned child welfare agencies unless otherwise provided in this article.

(t) The department shall recommend in writing to the owner of any facility operated as a day-care center, family day-care home, group day-care facility, or group day-care home or any child learning center licensed by the Department of Early Care and Learning that such facility carry liability insurance coverage sufficient to protect the facility's clients. Any such facility which after receiving such recommendation is not covered by liability insurance shall post that fact in a conspicuous place in the facility and shall notify the parent or guardian of each child under the care of the facility in writing. Such notice shall be in at least 1/2 inch letters. Each such parent or guardian must acknowledge receipt of such notice in writing and a copy of such acknowledgment shall be maintained on file at the facility at all times while the child attends the facility and for 12 months after the child's last date of attendance. Failure to do so may subject the owner of the facility to a civil fine of \$1,000.00 for each such infraction. (Ga. L. 1963, p. 81, §§ 3, 14; Ga. L. 1967, p. 772, § 1; Ga. L. 1973, p. 560, § 1; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 706, §§ 1, 3, 9, 10; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1986, p. 1038, § 1; Ga. L. 1987, p. 1435, §§ 3, 4; Ga.

L. 1988, p. 217, § 1; Ga. L. 1989, p. 1795, § 1; Ga. L. 1990, p. 8, § 49; Ga. L. 1991, p. 408, §§ 2-4; Ga. L. 1991, p. 1640, § 13; Ga. L. 1992, p. 6, § 49; Ga. L. 1994, p. 97, § 49; Ga. L. 1994, p. 650, § 4; Ga. L. 2004, p. 645, § 9; Ga. L. 2004, p. 1085, § 1; Ga. L. 2008, p. 1145, § 2/ HB 984; Ga. L. 2009, p. 453, §§ 2-2, 2-3/ HB 228; Ga. L. 2009, p. 800, § 6/ HB 388.)

The 2008 amendment, effective July 1, 2008, in subsection (a), inserted “children’s transition care center,” near the end; in subsection (i), added the last sentence; and added subsection (i.1).

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human Resources” in paragraph (f)(1), and substituted “Department of Human Services” for “Department of Human Resources” in the last two sentences of subsection (i.1). The second 2009 amendment, effective July 1, 2009, inserted “Article 1 of” in paragraphs (q)(1) and (q)(2).

Cross references. — Applicability of Interstate Compact on the Placement of Children regarding requirements for visitation, inspection, or supervision of children, homes, institutions, or other agencies in another state which is party to compact, § 39-4-10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, in subsection (t), “Department of Early Care and Learning” was substituted for “Office of School Readiness” in the first sentence, and “1/2”

was substituted for “one-half” in the third sentence.

Editor’s notes. — Ga. L. 2009, p. 800, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Option of Adoption Act.’”

Administrative rules and regulations. — Group day-care homes, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Resources, Chapters 290-2-1 et seq. Intensive residential treatment facilities for children and youth, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Department of Human Resources, Chapter 290-4-4.

Immunization of children as a prerequisite to admission to schools and other facilities, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Human Resources, Public Health, Chapter 290-5-4.

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 57 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 126 (1994).

JUDICIAL DECISIONS

Department of Human Resources licensure of church-operated children’s home. — A requirement that the Department of Human Resources license a church-operated children’s home as a child caring institution pursuant to the Children and Youth Act, O.C.G.A. § 49-5-1 et seq., and department regulations governing child caring institutions does not violate the free exercise clause of the first amendment, nor would it violate the establishment clause of the first amendment, since such a requirement in no way aids, furthers, or confers a special benefit on any religious group. *Darrell Dorminey Children’s Home v. Georgia Dep’t of Human Resources*, 260 Ga. 25, 389 S.E.2d 211 (1990).

Foster children. — O.C.G.A. §§ 15-11-13, 15-11-58, 20-2-690.1 and 49-5-12 set out in

clear detail the rights and services to which foster children are entitled. As a result, the federal statutory provisions in question are not too vague and amorphous to be enforced by the judiciary and each of the state statutes at issue impose specific duties on the state defendants. Thus, the federal regulatory scheme embodied in the Child and Family Services Review process does not relieve the state defendants of their obligation to fulfill their statutory duties to plaintiff foster children, nor does it provide a legal excuse for their failure to do so. *Kenny A. v. Perdue*, F. Supp. 2d , 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

Action for deprivation of civil rights. — The Georgia statutory foster care scheme created in a two-year-old child a legitimate and sufficiently vested claim of entitlement

such that deprivation of that entitlement without due process of law imposed on the child a grievous loss, supporting the child's action for injuries under the federal Civil Rights Act. *Taylor ex rel. Walker v. Ledbetter*, 818 F.2d 791 (11th Cir. 1987), cert. denied, 489 U.S. 1065, 109 S. Ct. 1337, 103 L. Ed. 2d 808 (1989).

Private cause of action. — The following factors are relevant in determining whether a private remedy is implicit in a statute not expressly providing one: first, whether the plaintiff is one of the class for whose special benefit the statute was enacted; second, whether there is any indication of legislative intent, explicit or implicit, either to create

such a remedy or to deny one; third, whether it is consistent with the underlying purpose of the legislative scheme to imply such a remedy for plaintiff. Where foster children alleged that certain child services agencies and officials violated O.C.G.A. § 49-5-12(j), that subsection conferred upon the children a private cause of action. *Kenny A. v. Perdue*, 218 F.R.D. 277 (N.D. Ga. Aug. 18, 2003).

Cited in Department of Human Resources v. *Ledbetter*, 153 Ga. App. 416, 265 S.E.2d 337 (1980); *Penaranda v. Cato*, 740 F. Supp. 1578 (S.D. Ga. 1990); *Kenny A. v. Perdue*, F. Supp. 2d , 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

OPINIONS OF THE ATTORNEY GENERAL

After school care programs on county school premises. — The Department of Human Resources may not license "latch key" or "after school" care programs operated by county school systems on their premises. 1985 Op. Att'y Gen. No. 85-11.

After school care programs operated by outside organization. — Department of Human Resources licensing obligations would extend to a "latch-key" or "after-school" care program on the premises of county school systems if the program is operated by an outside organization rather than school authorities. 1988 Op. Att'y Gen. No. U88-6.

Board authorized to adopt and department to enforce fire safety standards. — The Board of Human Resources has lawful authority to adopt the 1973 Life Safety Code (National Fire Protection Association standard 101), a comprehensive set of standards that deals with preventing and controlling losses from fire, as part of the rules and regulations for day-care centers, and the

Department of Human Resources has lawful authority to enforce compliance with code standards. 1976 Op. Att'y Gen. No. U76-6.

Board's standards for juvenile detention facilities are inapplicable to jails. — The detention standards adopted by the Board of Human Resources for juvenile detention facilities do not apply to jails in which juveniles are confined. 1974 Op. Att'y Gen. No. 74-139.

Steps necessary to cease operation of unlicensed day-care center. — The Division for Children and Youth (now Department of Children and Youth Services), in the absence of specific injunctive authority, must first try to obtain a misdemeanor warrant to stop the unlicensed operation of a day-care center, and, if this proves futile or inadequate, may bring an action for equitable injunction. 1970 Op. Att'y Gen. No. 70-105.

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

RESEARCH REFERENCES

C.J.S. — 43 C.J.S., Infants, §§ 39 et seq., 71 et seq.

ALR. — Tort liability of private nursery

school or day-care center, or employee thereof, for injury to child while attending facility, 58 ALR4th 240.

49-5-12.1. Penalties for violation of child welfare agency laws and regulations.

(a) Unless otherwise provided in subsection (r) of Code Section 49-5-12, any person who violates the provisions of Code Section 49-5-12 or who hinders, obstructs, or otherwise interferes with any representative of the department in the discharge of that person's official duties in making inspections as provided in Code Section 49-5-12 or in investigating complaints as provided in Code Section 49-5-12 shall be guilty of a misdemeanor.

(b)(1) Any person who:

(A) Violates any licensing or registration provision of this chapter or any rule, regulation, or order issued under this chapter or any term, condition, or limitation of any license or registration certificate under this chapter thereby subjecting a child in care to injury or a life-threatening situation; or

(B) Commits any violation for which a license or registration certificate may be revoked under rules or regulations issued pursuant to this chapter

may be subject to a civil penalty, to be imposed by the department, not to exceed \$500.00. If any violation is a continuing one, each day of such violation shall constitute a separate violation for the purpose of computing the applicable civil penalty.

(2) Whenever the department proposes to subject a person to the imposition of a civil penalty under this subsection, it shall notify such person in writing:

(A) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(B) Specifically identifying the particular provision or provisions of the Code section, rule, regulation, order, license, or registration certificate involved in the violation; and

(C) Advising of each penalty which the department proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail or statutory overnight delivery by the department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule or regulation prescribe, why such penalty should not be imposed. The notice shall also advise such person that, upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is

imposed may appeal such action pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(3) A civil penalty finally determined under this Code section may be collected by civil action in the event that such penalty is not paid as required. On the request of the department, the Attorney General is authorized to institute a civil action to collect a penalty imposed pursuant to this subsection. The Attorney General shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred to the Attorney General for collection.

(4) All moneys collected from civil penalties shall be paid to the state for deposit in the general fund. (Code 1981, § 49-5-12.1, enacted by Ga. L. 1986, p. 1038, § 1; Ga. L. 2000, p. 1589, § 3.)

Cross references. — Penalty for accepting a child for placement or adoption or placing such a child without a license, § 49-5-12(q).

§ 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Editor's notes. — Ga. L. 2000, p. 1589,

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 84, 99, 100.

49-5-13. Private day-care centers not required to meet federal adult-child ratio.

Nothing in this article or any rules and regulations adopted hereunder shall be construed to require that private day-care centers maintain a ratio of adults to children under care that is commensurate with any federal requirement concerning such adult to child ratio. (Ga. L. 1970, p. 720, § 1.)

49-5-14. Fire inspections of day-care homes and centers; fire safety codes.

Reserved. Repealed by Ga. L. 1985, p. 1642, § 1, effective July 1, 1985.

Editor's notes. — This Code section was based on Ga. L. 1984, p. 706, §§ 4, 5, 11; Ga. L. 1984, p. 22, § 49.

Code section provided that nothing in the Act would amend or repeal the definitions contained in Chapter 5 of Title 49.

Section 3 of the Act which repealed this

49-5-15. Notice as to child brought into state for placement or adoption; bond; certificate as to foster home; reports.

No person shall bring or send into the state any child for the purpose of placing him or procuring his adoption without first filing notice with the department. He shall file with the department a bond payable to the state for each child he intends to send or bring, approved by the department, in

the penal sum of \$1,000.00, conditioned that he will not send or bring into the state any child who is incorrigible or unsound in mind or body; that he will remove any such child who becomes a public charge or who, in the opinion of the department, becomes a menace to the community prior to his adoption or becoming of legal age; and that the person with whom the child is placed shall be responsible for his proper care and training. Before any child shall be brought or sent into the state for the purpose of placing him in a foster home, the person so bringing or sending such child shall first notify the department of his intention and shall obtain from the department a certificate stating that such home is, in the opinion of the department, a suitable home for the child. Such notification shall state the name, age, and personal description of the child; the name and address of the person with whom the child is to be placed; and such other information as may be required by the department. The person bringing or sending such child into the state shall report at least once each year and at such other times as the department shall direct as to the location and well-being of the child so long as such child shall remain within the state and until he shall have reached the age of 18 or shall have been legally adopted. (Ga. L. 1963, p. 81, § 15.)

Cross references. — Interstate Compact on the Placement of Children, Ch. 4, T. 39.

RESEARCH REFERENCES

C.J.S. — 2 C.J.S., Adoption of Persons, §§ 46, 48.

49-5-16. Power of department to contract; acceptance of children from federal courts for compensation.

(a) The department shall have the power and is authorized:

(1) To enter into contracts with federal, state, county, and municipal governments and their agencies and departments; public and private institutions and agencies of this and other states; and individuals, as may be necessary or desirable in effectuating the purposes of this article;

(2) To enter into contracts and cooperative agreements with county or district departments of family and children services as may be necessary or desirable in effectuating the purposes of this article;

(3) To enter into reciprocal agreements with appropriate public and private institutions and agencies of other states relative to providing child welfare and youth services to nonresident children and youths; and to cooperate with such institutions and agencies in establishment and operation of group-care facilities appropriate for social study, treatment, and rehabilitation of children and youths; and

(4) To accept children and youths from federal courts and provide them social services within the scope of this article for compensation and under such terms as may be agreed upon.

(b) The board may authorize the commissioner to enter into contracts and agreements provided for in this Code section subject to the approval of the board or may, through appropriate action of the board, delegate such authority to the commissioner. (Ga. L. 1963, p. 81, § 17.)

OPINIONS OF THE ATTORNEY GENERAL

Acceptance of children from federal institutions and provision of services in state facilities. — Department of Family and Children Services (now Division of Family and Children Services of the Department of Human Resources) is authorized to enter into agreements to accept children and youth from the federal penal and corrective institutions and agencies and to provide those institutions and agencies with the services extended by the facilities of the department to those children taken pursuant to Georgia court orders; the conditions and circumstances under which such agreements should be effectuated is a matter within the administrative powers of the board pursuant to Ga. L. 1963, p. 81, § 6 (see O.C.G.A. § 49-5-5) and can be effectuated by the adoption of such appropriate rules and regulations as the board deems necessary. Adequate compensation for the costs thereof may be collected by the department from the agency transferring the children or youth to the Georgia facilities. 1968 Op. Att'y Gen. No. 68-191.

Contracting with counties for purchase or transfer of land. — The Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) is authorized to contract with a county for the purchase or transfer of land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

Department may contract with a county to construct and equip a temporary care facility for youths, pending juvenile delinquency proceedings, provided that funds appropriated from the Governor's Emergency Fund do not create a continuing obligation for the state. 1970 Op. Att'y Gen. No. 70-119.

Board may contract to pay travel expenses of volunteers. — The Board of Human Resources, through the board's specifically delegated contractual authority, may contract in writing to pay travel expenses to volunteer workers performing work properly authorized by the department. 1971 Op. Att'y Gen. No. 71-76.

49-5-17. Power of department to accept and use gifts.

The department is authorized and empowered to receive, accept, hold, and use, on behalf of the state and for purposes provided for in this article, gifts, grants, donations, devises, and bequests of real, personal, and mixed property of every kind and description. (Ga. L. 1963, p. 81, § 18.)

OPINIONS OF THE ATTORNEY GENERAL

Department of Human Resources may accept public funds donated voluntarily by counties for the provision of day-care and other social services to welfare applicants and other authorized recipients. 1972 Op. Att'y Gen. No. 72-12.

Contracting with counties for purchase or transfer of land. — Division for Children and Youth (now Division of Family and Children Services of the Department of Human Resources) is authorized to contract with a county for the purchase or transfer of

land to be used for a maximum security child detention center. 1970 Op. Att'y Gen. No. 70-104; 1970 Op. Att'y Gen. No. 70-187.

RESEARCH REFERENCES

C.J.S. — 14 C.J.S., Charities, §§ 16, 32 et seq.

49-5-18. Instituting or intervening in legal proceedings.

The commissioner is authorized to institute or to intervene in any legal proceedings necessary to the performance of duties and responsibilities of the department and to the enforcement of this article and provisions of policies, standards, rules, and regulations established by the board in conformity with this article as may be commensurate with the legal status of the department to a child or youth committed to the care, custody, or control of the department or as may otherwise be specifically provided for in this article. (Ga. L. 1963, p. 81, § 19.)

49-5-19. Annual report on children and youth services.

The commissioner shall prepare and publish an annual report on the operations of the department and of county departments of family and children services under this article and submit it to the Governor, the board, and all interested persons, officials, agencies, and groups, public or private. The report shall contain, in addition to information, statistics, and data required by other provisions of this article, a comprehensive analysis of performance of child welfare and youth services throughout the state; an analysis of goals to reduce by 1 percent each year, beginning with the fiscal year that starts October 1, 1983, the number of children who have been in family or institutional foster care for a period of 24 months or longer, as provided by Public Law 96-272; and such other information and recommendations of the commissioner as may be suitable. (Ga. L. 1963, p. 81, § 20; Ga. L. 1982, p. 1120, §§ 1, 2.)

U.S. Code. — Public Law 96-272, the federal Adoption Assistance and Child Welfare Act of 1980, is codified in numerous provisions of Title 42 of the U.S. Code.

49-5-20. Existing charters of charitable institutions.

Nothing in this article shall be deemed to revoke any charter of incorporation of any orphans' home or charitable or benevolent institution incorporated and established under the Act of the General Assembly approved December 18, 1894 (Ga. L. 1894, p. 80), as amended by the Act of the General Assembly approved December 16, 1898 (Ga. L. 1898, p. 104), notwithstanding the repeal of such Acts by Ga. L. 1963, p. 81, Section 24, or to impair or diminish the rights, powers, or privileges of such corporation

as provided in its charter of incorporation. (Ga. L. 1963, p. 81, § 22; Ga. L. 1994, p. 97, § 49.)

49-5-21. Penalties for aiding, harboring, or encouraging escapees or hindering their apprehension.

(a) Any person who shall knowingly aid, assist, or encourage any child or youth under the lawful control or custody of the department or of any licensed child welfare agency or home or facility used by such agency, public or private, to escape or to attempt to escape its control or custody shall be guilty of a misdemeanor.

(b) Any person who shall knowingly harbor, shelter, entertain, or encourage any child or youth who has escaped the lawful custody or control of the department or of any licensed child welfare agency or home or facility used by such agency, public or private, shall be guilty of a misdemeanor.

(c) Any person who shall knowingly hinder the apprehension of any child under the lawful control or custody of the department who has been placed by the department in one of its institutions or facilities and who has escaped therefrom or who has been placed under supervision and is alleged to have broken the conditions thereof shall be guilty of a misdemeanor. (Ga. L. 1963, p. 81, § 16; Ga. L. 1976, p. 1066, § 2.)

49-5-22. Voluntary pre-kindergarten programs to provide toilet facilities screened for privacy.

(a) The General Assembly finds that just as gender separated toileting among nonrelatives is the norm among adults, children should be allowed the same opportunity to practice modesty when independent toileting behavior is well established among the majority of their age group. Standardized adherence to this policy would provide privacy, injury control, and sanitation.

(b) Each public or private voluntary pre-kindergarten program in this state which receives state funding shall provide toilet facilities for the four-year-old pre-kindergarten age children which it serves which are suitably screened for privacy. Nothing contained in this Code section shall be construed to require a pre-kindergarten program to provide separately constructed toilet facilities.

(c) The provisions of subsection (b) of this Code section shall not apply to any voluntary pre-kindergarten program which provides separate and gender-specific toilet facilities for the children which it serves. (Code 1981, § 49-5-22, enacted by Ga. L. 1996, p. 991, § 1; Ga. L. 1997, p. 143, § 49.)

Code Commission notes. — Pursuant to was substituted for “four year old” in the Code Section 28-9-5, in 1996, “four-year-old” first sentence of subsection (b).

49-5-23. Obtaining information on recall notices.

(a) Any agency, department, or office that regulates child welfare agencies shall make available to such child welfare agencies at the time of application for initial or renewal certification or licensure information concerning contacting the U.S. Consumer Product Safety Commission to obtain recall notices on unsafe child and infant products.

(b) Child welfare agencies shall post the phone number and website of the U.S. Consumer Product Safety Commission in a location visible to parents and visitors. The notice shall also advise such parents and visitors on how to obtain recall notices on unsafe child and infant products. (Code 1981, § 49-5-23, enacted by Ga. L. 2004, p. 333, § 1.)

ARTICLE 2**CHILD ABUSE AND DEPRIVATION RECORDS**

Cross references. — Procedures for reporting of instances of child abuse, and as to penalty for failure to report suspected cases of child abuse, § 19-7-5. Battery, assault, stalking, and other offenses involving family members, § 19-13-1 et seq.

Law reviews. — For note on 1993 amendment of this article, see 10 Ga. St. U.L. Rev. 131 (1993).

49-5-40. Definitions; confidentiality of records; restricted access to records.

(a) As used in this article, the term:

- (1) “Abused” means subjected to child abuse.
- (2) “Child” means any person under 18 years of age.
- (3) “Child abuse” means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means; provided, however, that physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof;

(C) Sexual abuse of a child; or

(D) Sexual exploitation of a child.

However, no child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an “abused” child.

(4) "Near fatality" means an act that places a child in serious or critical condition as certified by a physician.

(5) "Sexual abuse" means a person's employing, using, persuading, inducing, enticing, or coercing any minor who is not that person's spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person's clothed or unclothed genitals, pubic area, or buttocks or with a female's clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation;
or

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure.

"Sexual abuse" shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(6) "Sexual exploitation" means conduct by any person who allows, permits, encourages, or requires that child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(b) Each and every record concerning reports of child abuse and child controlled substance or marijuana abuse which is in the custody of the department or other state or local agency is declared to be confidential, and access thereto is prohibited except as provided in Code Section 49-5-41 and Code Section 49-5-41.1.

(c) Each and every record concerning child abuse or neglect which is received by the department from the child abuse and neglect registry of any other state shall not be disclosed or used outside the department for any other purpose other than conducting background checks to be used in foster care and adoptive placements. (Ga. L. 1975, p. 1135, § 1; Ga. L. 1987, p. 1000, § 2; Ga. L. 1990, p. 1778, § 1; Ga. L. 1993, p. 1712, § 1; Ga. L. 2007, p. 478, § 7/SB 128; Ga. L. 2009, p. 43, § 1/SB 79; Ga. L. 2009, p. 733, § 3/SB 69.)

The 2007 amendment, effective May 24, 2007, added subsection (c).

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, in paragraph (a)(3), inserted “that” in the middle of subparagraph (a)(3)(A), added “or” at the end of subdivision (a)(3)(C), substituted a period for “; or” at the end of subparagraph (a)(3)(D), and deleted the subparagraph (a)(3)(E) designation; added paragraph (a)(4); and redesignated former paragraphs (a)(3.1) and (a)(4) as present paragraphs (a)(5) and (a)(6), respectively. The second 2009 amendment, effective May

5, 2009, substituted “any person” for “a child’s parent or caretaker” in the introductory language of paragraph (a)(4) (now paragraph (a)(6)).

Cross references. — Persons required to report instances of child abuse, § 19-7-5. Battery, assault and stalking involving family members, § 19-13-1 et seq.

Law reviews. — For article, “Georgia’s Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine,” see 40 Mercer L. Rev. 1 (1988).

JUDICIAL DECISIONS

Discovery of “scientific records.” — Former O.C.G.A. § 17-7-211 did not provide an independent statutory basis for discovery of “scientific records” of child abuse maintained by institutions listed in O.C.G.A. § 49-5-40. In the absence of obtaining a statutory exception by compliance with O.C.G.A. § 49-5-41 or § 49-5-41.1, as applicable, such child abuse records remain protected. *Horne v. State*, 192 Ga. App. 528, 385 S.E.2d 704 (1989), cert. denied, 494 U.S. 1006, 110 S. Ct. 1302, 108 L. Ed. 2d 749 (1990).

Failure to provide county child abuse records. — Trial court erred by failing to provide defendant with the county child abuse documents the defendant requested during the defendant’s trial for child molestation, but the defendant was not denied

due process since defendant failed to show that the trial court withheld any material, exculpatory information. *Dodd v. State*, 293 Ga. App. 816, 668 S.E.2d 311 (2008).

Burden on defendant to show need for release of records. — Trial court did not err by failing to release documents showing earlier child abuse from a child’s file which might have been critical to a defendant’s case since the burden was on the defendant to show what documents in a child’s sealed file were suppressed and how it was materially exculpatory and defendant failed to make the showing. *Dunagan v. State*, 255 Ga. App. 309, 565 S.E.2d 526 (2002).

Cited in *Ray v. Department of Human Resources*, 155 Ga. App. 81, 270 S.E.2d 303 (1980).

OPINIONS OF THE ATTORNEY GENERAL

Release of records to Department of Education hearing officers. — Those portions of child protective service records releasable to parents and guardians under Social Services County Letter No. 86-1 promulgated

pursuant to federal court order in *J.J. v. Ledbetter*, C.A. No. CV180-84, U.S.D.C., S.D. Ga. (1985), may likewise be released to Department of Education hearing officers conducting hearings under the Education of

All Handicapped Act, 20 U.S.C. § 1401 et seq., if, and only if, (1) the parents specifically request in writing that Department of Human Resources forward the records to the hearing officer, or (2) Department of Human Resources receives a written request

for the records from the hearing officer personally and is subsequently able to secure the written permission of the parents to forward the records to the hearing officer. 1987 Op. Att'y Gen. No. 87-25.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statute limiting physician-patient privilege in judicial proceedings relating to child abuse or neglect, 44 ALR4th 649.

Denial or restriction of visitation rights to parent charged with sexually abusing child, 1 ALR5th 776.

49-5-41. Persons and agencies permitted access to records.

(a) Notwithstanding Code Section 49-5-40, the following persons or agencies shall have reasonable access to such records concerning reports of child abuse:

(1) Any federal, state, or local governmental entity, or any agency of any such entity, that has a need for information contained in such reports in order to carry out its legal responsibilities to protect children from abuse and neglect;

(2) A court, by subpoena, upon its finding that access to such records may be necessary for determination of an issue before such court; provided, however, that the court shall examine such record in camera, unless the court determines that public disclosure of the information contained therein is necessary for the resolution of an issue then before it and the record is otherwise admissible under the rules of evidence;

(3) A grand jury by subpoena upon its determination that access to such records is necessary in the conduct of its official business;

(4) A district attorney of any judicial circuit in this state or any assistant district attorney who may seek such access in connection with official duty;

(5) Any adult who makes a report of suspected child abuse as required by Code Section 19-7-5, but such access shall include only notification regarding the child concerning whom the report was made, shall disclose only whether the investigation by the department or governmental child protective agency of the reported abuse is ongoing or completed and, if completed, whether child abuse was confirmed or unconfirmed, and shall only be disclosed if requested by the person making the report;

(6) Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding the findings or information about the case of child abuse or neglect that results in a child fatality or near fatality, unless such disclosure of

information would jeopardize a criminal investigation or proceeding, but such access shall be limited to a disclosure of the available facts and findings. Any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers.

(7) The State Personnel Board, by administrative subpoena, upon a finding by an administrative law judge appointed by the chief state administrative law judge pursuant to Article 2 of Chapter 13 of Title 50, that access to such records may be necessary for a determination of an issue involving departmental personnel and that issue involves the conduct of such personnel in child related employment activities, provided that only those parts of the record relevant to the child related employment activities shall be disclosed. The name of any complainant or client shall not be identified or entered into the record;

(7.1) A child advocacy center which is certified by the Child Abuse Protocol Committee of the county where the principal office of the center is located as participating in the Georgia Network of Children's Advocacy Centers or a similar accreditation organization and which is operated for the purpose of investigation of known or suspected child abuse and treatment of a child or a family which is the subject of a report of abuse, and which has been created and supported through one or more intracommunity compacts between such advocacy center and one or more police agencies, the office of the district attorney, a legally mandated public or private child protective agency, a mental health board, and a community health service board; provided, however, that any child advocacy center which is granted access to records concerning reports of child abuse shall be subject to the confidentiality provisions of subsection (b) of Code Section 49-5-40 and shall be subject to the penalties imposed by Code Section 49-5-44 for authorizing or permitting unauthorized access to or use of such records;

(8) Police or any other law enforcement agency of this state or any other state or any medical examiner or coroner investigating a report of known or suspected abuse or any child fatality review panel or child abuse protocol committee or subcommittee thereof created pursuant to Chapter 15 of Title 19, it being found by the General Assembly that the disclosure of such information is necessary in order for such entities to carry out their legal responsibilities to protect children from abuse and neglect, which protective actions include bringing criminal actions for such abuse or neglect, and that such disclosure is therefore permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4); and

(9) The Governor, the Attorney General, the Lieutenant Governor, or the Speaker of the House of Representatives when such officer makes a written request to the commissioner of the department which specifies the name of the child for which such access is sought and which describes such officer's need to have access to such records in order to determine whether the laws of this state are being complied with to protect children from abuse and neglect and whether such laws need to be changed to enhance such protection, for which purposes the General Assembly finds such disclosure is permissible and encouraged under the 1992 amendments to Section 107(b)(4) of the Child Abuse Prevention and Treatment Act, 42 U.S.C. Section 5106(A)(b)(4).

(b)(1) Notwithstanding Code Section 49-5-40, the juvenile court in the county in which are located any department or county board records concerning reports of child abuse, after application for inspection and a hearing on the issue, shall permit inspection of such records by or release of information from such records to individuals or entities who are engaged in legitimate research for educational, scientific, or public purposes and who comply with the provisions of this subsection. When those records are located in more than one county, the application may be made to the juvenile court of any one such county. A copy of any application authorized by this subsection shall be served on the nearest office of the department. In cases where the location of the records is unknown to the applicant, the application may be made to the Juvenile Court of Fulton County.

(2) The juvenile court to which an application is made pursuant to paragraph (1) of this subsection shall not grant the application unless:

(A) The application includes a description of the proposed research project, including a specific statement of the information required, the purpose for which the project requires that information, and a methodology to assure the information is not arbitrarily sought;

(B) The applicant carries the burden of showing the legitimacy of the research project; and

(C) Names and addresses of individuals, other than officials, employees, or agents of agencies receiving or investigating a report of abuse or treating a child or family which is the subject of a report, shall be deleted from any information released pursuant to this subsection unless the court determines that having the names and addresses open for review is essential to the research and the child, through his or her representative, gives permission to release the information.

(3) Notwithstanding the provisions of this subsection, access to the child abuse registry created pursuant to Article 8 of this chapter shall not be permitted except as allowed by Article 8 of this chapter.

(c) The department or a county or other state or local agency may permit access to records concerning reports of child abuse and may release

information from such records to the following persons or agencies when deemed appropriate by such department:

(1) A physician who has before him a child whom he reasonably suspects may be abused;

(2) A licensed child-placing agency, a licensed child-caring institution of this state which is assisting the Department of Human Services by locating or providing foster or adoptive homes for children in the custody of the department, or an investigator appointed by a court of competent jurisdiction of this state to investigate a pending petition for adoption;

(3) A person legally authorized to place a child in protective custody when such person has before him a child he reasonably suspects may be abused and such person requires the information in the record or report in order to determine whether to place the child in protective custody;

(4) An agency or person having the legal custody, responsibility, or authorization to care for, treat, or supervise the child who is the subject of a report or record;

(5) An agency, facility, or person having responsibility or authorization to assist in making a judicial determination for the child who is the subject of the report or record of child abuse, including but not limited to members of officially recognized citizen review panels, court appointed guardians ad litem, certified Court Appointed Special Advocate (CASA) volunteers who are appointed by a judge of a juvenile court to act as advocates for the best interest of a child in a juvenile proceeding, and members of a county child abuse protocol committee or task force;

(6) A legally mandated public child protective agency or law enforcement agency of another state bound by similar confidentiality provisions and requirements when, during or following the department's investigation of a report of child abuse, the alleged abuser has left this state;

(7) A child welfare agency, as defined in Code Section 49-5-12, or a school where the department has investigated allegations of child abuse made against any employee of such agency or school and any child remains at risk from exposure to that employee, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(8) An employee of a school or employee of a child welfare agency, as defined in Code Section 49-5-12, against whom allegations of child abuse have been made, when the department has been unable to determine the extent of the employee's involvement in alleged child abuse against any

child in the care of that school or agency. In those instances, upon receiving a request and signed release from the employee, the department may report its findings to the employer, except that such access or release shall protect the identity of:

(A) Any person reporting the child abuse; and

(B) Any other person whose life or safety has been determined by the department or agency likely to be endangered if the identity were not so protected;

(9) Any person who has an ongoing relationship with the child named in the record or report of child abuse any part of which is to be disclosed to such person but only if that person is required to report suspected abuse of that child pursuant to subsection (b) of Code Section 19-7-5, as that subsection existed on January 1, 1990;

(10) Any school principal or any school guidance counselor, school social worker, or school psychologist who is certified under Chapter 2 of Title 20 and who is counseling a student as a part of such counseling person's school employment duties, but those records shall remain confidential and information obtained therefrom by that counseling person may not be disclosed to any person, except that student, not authorized under this Code section to obtain those records, and such unauthorized disclosure shall be punishable as a misdemeanor;

(11) The Department of Early Care and Learning or the Department of Education; or

(12) An individual, at the time such individual is leaving foster care by reason of having attained the age of majority, but such access shall be limited to providing such individual with a free copy of his or her health and education records, including the most recent information available.

(d) Notwithstanding any other provision of law, any child-caring agency, child-placing agency, or identified foster parent shall have reasonable access to nonidentifying information from the placement or child protective services record compiled by any state department or agency having custody of a child with respect to any child who has been placed in the care or custody of such agency or foster parent or for whom foster care is being sought, excluding all documents obtained from outside sources which cannot be redisclosed under state or federal law. A department or agency shall respond to a request for access to a child's record within 14 days of receipt of such written request. Any child-caring agency, child-placing agency, or identified foster parent who is granted access to a child's record shall be subject to the penalties imposed by Code Section 49-5-44 for unauthorized access to or use of such records. Such record shall include reports of abuse of such child and the social history of the child and the child's family, the medical history of such child, including psychological or

psychiatric evaluations, or educational records as allowed by state or federal law and any plan of care or placement plan developed by the department, provided that no identifying information is disclosed regarding such child.

(e) Notwithstanding any other provisions of law, with the exception of medical and mental health records made confidential by other provisions of law, child abuse and deprivation records applicable to a child who at the time of his or her fatality or near fatality was:

- (1) In the custody of a state department or agency or foster parent;
- (2) A child as defined in paragraph (3) of Code Section 15-11-171; or
- (3) The subject of an investigation, report, referral, or complaint under Code Section 15-11-173

shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records; provided, however, that any identifying information, including but not limited to the child or caretaker's name, race, ethnicity, address, or telephone numbers and any other information that is privileged or confidential, shall be redacted to preserve the confidentiality of the child, other children in the household, and the child's parents, guardians, custodians, or caretakers. Upon the release of documents pursuant to this subsection, the department may comment publicly on the case. (Ga. L. 1975, p. 1135, § 2; Ga. L. 1990, p. 1778, § 2; Ga. L. 1991, p. 1320, §§ 1-3; Ga. L. 1993, p. 979, § 2; Ga. L. 1993, p. 1712, § 2; Ga. L. 1994, p. 967, §§ 1, 2; Ga. L. 1996, p. 1143, § 1; Ga. L. 1997, p. 844, § 4; Ga. L. 1998, p. 609, § 5; Ga. L. 2000, p. 243, § 3; Ga. L. 2001, p. 4, § 49; Ga. L. 2002, p. 861, § 1; Ga. L. 2003, p. 497, § 1; Ga. L. 2004, p. 645, § 16; Ga. L. 2006, p. 72, § 49/SB 465; Ga. L. 2007, p. 478, § 8/SB 128; Ga. L. 2009, p. 43, §§ 2, 3/SB 79; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2007 amendment, effective May, 24, 2007, added paragraph (c)(12).

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, substituted the present provisions of paragraph (a)(1) for the former provisions, which read: "A legally mandated, public or private, child protective agency of this state or any other state bound by similar confidentiality provisions and requirements which is investigating a report of known or suspected child abuse or treating a child or family which is the subject of a report or record;"; substituted the present provisions of paragraph (a)(6) for the former provisions, which read: "Any adult requesting information regarding investigations by the department or a governmental child protective agency regarding a deceased child when such person specifies the identity of the child, but such

access shall be limited to a disclosure regarding whether there is such an ongoing or completed investigation of such death and, if completed, whether child abuse was confirmed or unconfirmed;"; inserted "that" near the end of paragraph (a)(7.1); inserted "child fatality review panel or" near the beginning of paragraph (a)(8); and, in subsection (e), substituted "fatality or near fatality" for "death" near the end of the introductory paragraph and, in the ending undesignated paragraph, added the proviso and added the second sentence. The second 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in paragraph (c)(2).

Cross references. — Investigation of instances of child abuse or neglect in custody disputes, § 19-9-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was inserted following “Lieutenant Governor” in paragraph (a)(10) (now (a)(9)).

Pursuant to Code Section 28-9-5, in 2000, “complaint” was substituted for “compliant” in paragraph (e)(3).

Pursuant to Code Section 28-9-5, in 2007, “and” was deleted from the end of paragraph (c)(10), and “; or” was substituted for a period at the end of paragraph (c)(11).

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 268 (1990). For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 194 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 260 (1994). For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 307 (1996). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 331 (2002).

JUDICIAL DECISIONS

If the juvenile court considers it necessary for resolution of an issue before the court, the court may order disclosure of information. *Ray v. Department of Human Resources*, 155 Ga. App. 81, 270 S.E.2d 303 (1980).

Procedure for obtaining records for child abuse investigation. — Where defendant assigned error to the trial court’s failure to direct the Department of Human Resources to disclose any and all reports used by or prepared by the department in investigating an allegation of child abuse, since the records sought by defendant were confidential and access thereto was prohibited except as provided by O.C.G.A. Art. 2, Ch. 5, T. 49, the proper procedure for obtaining access was to petition the trial court to subpoena the records and conduct an in camera inspection as to whether the records were necessary for determination of an issue before the court and were otherwise admissible under the rules of evidence. Defendant’s general Brady motion was inadequate to have properly raised this issue in the court below, and the assertion of error in this regard was meritless. *Davidson v. State*, 183 Ga. App. 557, 359 S.E.2d 372, cert. denied, 183 Ga. App. 905, 359 S.E.2d 372 (1987).

Criminal defendant not entitled to records. — In a prosecution for aggravated child molestation and related crimes, the trial court did not err in denying the defense request for the notes and work product of the social workers who testified at trial concerning their contact with the children involved. *Moss v. State*, 216 Ga. App. 711, 455 S.E.2d 411 (1995).

In a prosecution for child molestation, the trial court did not err in denying defendant’s request for a complete copy of files

from the Department of Family and Children Services. *Honeycutt v. State*, 245 Ga. App. 819, 538 S.E.2d 870 (2000).

Given the fact that the defendant failed to request an in camera inspection of confidential records and files pertaining to allegations of sexual abuse allegedly committed by the defendant until appellate counsel did so in the second amended motion for new trial, the state was not obligated to produce the information and did not violate the defendant’s due process rights under Brady or Georgia’s reciprocal discovery act by not providing the file earlier. Moreover, some of the information was known to the defendant, and no showing that the information could have been obtained with due diligence was made. *Ellis v. State*, 289 Ga. App. 452, 657 S.E.2d 562 (2008).

Criminal defendant should have received county child abuse documents. — Trial court erred by failing to provide defendant with the county child abuse documents the defendant requested during the defendant’s trial for child molestation, but the defendant was not denied due process since defendant failed to show that the trial court withheld any material, exculpatory information. *Dodd v. State*, 293 Ga. App. 816, 668 S.E.2d 311 (2008).

Burden on defendant to show need for release of records. — Trial court did not err by failing to release documents showing earlier child abuse from a child’s file which might have been critical to a defendant’s case since the burden was on the defendant to show what documents in a child’s sealed file were suppressed and how those documents were materially exculpatory and defendant failed to make the showing. *Dunagan v. State*, 255 Ga. App. 309, 565 S.E.2d 526 (2002).

Trial court may not delegate duty of reviewing records. — Where a trial court subpoenas the records of the Georgia Department of Family and Children Services (DFACS) under the provisions of O.C.G.A. § 49-5-41 upon the court's finding that access to such records may be necessary, the court is required to undertake review of the records for potentially exculpatory material, and there is no statutory discretion enabling the trial court to relegate this duty to others because of their status as officers of the court; thus, after the trial court had subpoenaed the DFACS records under O.C.G.A. § 49-5-41 in defendant's case, the trial court erred in failing to review the records in camera for exculpatory evidence and in having the prosecution undertake that review, but the error was harmless since defendant

acquiesced in the trial court's improper decision to delegate the court's duty of reviewing the records to the prosecution. *Pollard v. State*, 260 Ga. App. 540, 580 S.E.2d 337 (2003).

A nonprofit advocacy organization mandated under federal law to investigate incidents of abuse and neglect of individuals with mental illness should have been given reasonable access to confidential county and juvenile court records in connection with investigations relating to the organization's filing of a deprivation petition. *In re A.V.B.*, 222 Ga. App. 241, 474 S.E.2d 114 (1996).

Cited in *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987); *Pope v. State*, 197 Ga. App. 832, 399 S.E.2d 552 (1990); *Roberts v. State*, 229 Ga. App. 783, 494 S.E.2d 689 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Release of records to Department of Education hearing officers. — Those portions of child protective service records otherwise releasable to parents and guardians under Social Services County Letter No. 86-1 promulgated pursuant to federal court order in *J.J. v. Ledbetter*, C.A. No. CV180-84, U.S.D.C., S.D. Ga. (1985), may likewise be released to Department of Education hearing officers conducting hearings under the Education of All Handicapped Act, 20 U.S.C.

§ 1401 et seq., if, and only if, (1) the parents specifically request in writing that Department of Human Resources forward the records to the hearing officer, or (2) Department of Human Resources receives a written request for the records from the hearing officer personally and is subsequently able to secure the written permission of the parents to forward the records to the hearing officer. 1987 Op. Att'y Gen. No. 87-25.

49-5-41.1. Inspection and retention of records of juvenile drug use.

(a) Notwithstanding Code Section 49-5-40, all reports, files, and records of child controlled substance or marijuana abuse shall be open to inspection only upon order of the juvenile court. As used in this Code section, the term "juvenile court" means the court exercising jurisdiction over juvenile matters, as defined under Code Section 15-11-2, in the county where the report was made.

(b) The juvenile court may permit authorized representatives of recognized organizations compiling statistics for proper purposes to inspect and make abstracts from official records under whatever conditions upon their use and distribution the judge may deem proper and may punish by contempt any violation of those conditions. The judge shall permit authorized representatives of the Department of Human Services and the Council of Juvenile Court Judges to inspect and extract data from child controlled substance and marijuana abuse records for the purpose of

obtaining statistics on juveniles and to make copies pursuant to the order of the court.

(c) In no case shall records of child controlled substance or marijuana abuse be retained by the Department of Human Services beyond the 24 months from the date a report is first received pursuant to Code Section 19-7-6 by a child welfare agency providing protective services.

(d) On application of a person who is the subject of a child controlled substance or marijuana abuse report, and after a hearing, the juvenile court may order the sealing of such reports, files, and records of the Department of Human Services. Upon entry of the order, the Department of Human Services shall treat the report and related information as if the report had never occurred. All index references shall be deleted and the person, the court, and the Department of Human Services shall properly reply that no record exists with respect to the person upon inquiry in any matter. Inspection of the sealed files and records thereafter may be permitted by an order of the juvenile court upon petition by the person who is the subject of the records and only by those persons named in the order. (Code 1981, § 49-5-41.1, enacted by Ga. L. 1987, p. 1000, § 3; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" throughout this Code section.

49-5-42. Rules and regulations.

The board may adopt rules and regulations not inconsistent with this article. (Ga. L. 1975, p. 1135, § 4.)

49-5-43. Article not to conflict with federal law or lose federal funds; duty of board.

Nothing in this article is intended to conflict with any provision of federal law or to result in the loss or denial of federal funds. The board shall adopt rules and regulations necessary to prevent conflict with federal law or the loss of federal funds. (Ga. L. 1975, p. 1135, § 5.)

49-5-44. Penalties for unauthorized access to records; use of records in public and criminal proceedings.

(a) Any person who authorizes or permits any person or agency not listed in Code Section 49-5-41 to have access to such records concerning reports of child abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor.

(b) Any person who knowingly and under false pretense obtains or attempts to obtain records or reports of child abuse declared confidential

by Code Section 49-5-40 or information contained therein except as authorized in this article or Code Section 19-7-5 shall be guilty of a misdemeanor.

(c) Records made confidential by Code Section 49-5-40 and information obtained from such records may not be made a part of any record which is open to the public except that a district attorney may use and make public that record or information in the course of any criminal prosecution for any offense which constitutes or results from child abuse. (Ga. L. 1975, p. 1135, § 3; Ga. L. 1990, p. 1778, § 3.)

49-5-45. Penalty for allowing unauthorized access to juvenile drug use records.

Any person who authorizes or permits any person or agency not authorized by the juvenile court pursuant to Code Section 49-5-41.1 to have access to such records concerning reports of child controlled substance or marijuana abuse declared confidential by Code Section 49-5-40 shall be guilty of a misdemeanor. (Code 1981, § 49-5-45, enacted by Ga. L. 1987, p. 1000, § 4.)

49-5-46. Liability of department or agency.

The department or any agency and employees of either providing access to or disclosure of records or information as authorized by Code Section 49-5-41 shall have no civil or criminal liability therefor. (Code 1981, § 49-5-46, enacted by Ga. L. 1990, p. 1778, § 4.)

ARTICLE 3

EMPLOYEES' RECORDS CHECKS FOR DAY-CARE CENTERS

Administrative rules and regulations. — Regulations of the State of Georgia, Department of Human Resources, Chapter 290-1-5. Schedule of fees for fingerprint records check, Official Compilation of the Rules and

RESEARCH REFERENCES

ALR. — Governmental liability for negligence in licensing, regulating, or supervising private day-care home in which child is injured, 68 ALR4th 266.

49-5-60. Definitions.

As used in this article, the term:

- (1) "Center" means a child welfare agency, as defined in subsection (a) of Code Section 49-5-12, which is required to be licensed or registered under Article 1 of this chapter.

(2) "Conviction" means a finding or verdict of guilty or a plea of guilty regardless of whether an appeal of the conviction has been sought.

(3) "Crime" means any felony; a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist; a violation of Code Section 16-4-1, relating to criminal attempt when the crime attempted is any of the crimes specified by this paragraph; or any other offenses committed in another jurisdiction which, if committed in this state, would be one of the enumerated crimes listed in this paragraph.

(4) "Criminal record" means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where:

(i) A plea of nolo contendere was entered to the charge;

(ii) First offender treatment without adjudication of guilt pursuant to the charge was granted; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(iii) Adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this division shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(5) "Director" means the chief administrative or executive officer of a facility.

(5.1) "Emergency temporary employee" means an employee other than a director whose duties involve personal contact between that person and any child being cared for at the facility and who is hired on an expedited basis to avoid noncompliance with staffing standards for centers required by law, rule, or regulation.

(6) "Employee" means any person, other than a director, employed by a center to perform at any of the center's facilities any duties which

involve personal contact between that person and any child being cared for at the facility and also includes any adult person who resides at the facility or who, with or without compensation, performs duties for the center which involve personal contact between that person and any child being cared for by the center.

(7) "Employment history" means a record of where a person has worked for the past ten years.

(8) "Facility" means a center's real property at which children are received for care.

(9) "Fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(10) "Foster care home" means a private home used by a child-placing agency which has been approved by the child-placing agency to provide 24 hour care, lodging, supervision, and maintenance for no more than six children who are unrelated to the foster parent or parents.

(11) "Foster parent or parents" means the person or persons who provide care, lodging, supervision, and maintenance in a foster care home used by a child-placing agency.

(12) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(13) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(14) "License" means the document issued by the department to authorize the center to which it is issued to operate a facility under this chapter.

(14.1) "National fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a report from the Federal Bureau of Investigation after a search of bureau records and fingerprints.

(15) "Preliminary records check application" means an application for a preliminary records check determination on forms provided by the department.

(16) "Preliminary records check determination" means a satisfactory or unsatisfactory determination by the department based only upon a comparison of GCIC information with other than fingerprint information regarding the person upon whom the records check is being performed.

(17) "Records check application" means two sets of classifiable fingerprints, a records search fee to be established by the department by rule

and regulation, payable in such form as the department may direct to cover the cost of a fingerprint records check under this article, and an affidavit by the applicant disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state, and such additional information as the department may require.

(18) "Satisfactory determination" means a written determination that a person for whom a records check was performed was found to have no criminal record.

(18.1) "State fingerprint records check determination" means a satisfactory or unsatisfactory determination by the department in accordance with applicable law based upon a records check comparison of GCIC information with fingerprints and other information in a records check application.

(19) "Unsatisfactory determination" means a written determination that a person for whom a records check was performed has a criminal record. (Code 1981, § 49-5-60, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1986, p. 822, § 2; Ga. L. 1987, p. 1416, § 1; Ga. L. 1988, p. 1605, § 1; Ga. L. 1992, p. 6, § 49; Ga. L. 1993, p. 757, § 1; Ga. L. 1999, p. 539, § 1; Ga. L. 1999, p. 574, § 3; Ga. L. 2004, p. 333, § 2; Ga. L. 2004, p. 645, § 10; Ga. L. 2009, p. 453, § 2-23/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "child welfare agency, as defined in subsection (a) of Code Section 49-5-12," for "child-caring institution or child-placing agency" in paragraph (1).

Law reviews. — For note on 1999 amendments to Code sections in this article, see 16 Ga. St. U.L. Rev. 227 (1999).

JUDICIAL DECISIONS

Foster parent. — Trial court erred in ruling that a supervisor of a corporate child care institution was a foster parent, and therefore a state employee for whose negligence the state waived sovereign immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., in a wrongful death suit where a juvenile that the Georgia

Department of Human Resources and the Georgia Department of Juvenile Justice placed in the corporate child care institution was accidentally killed. Ga. Dep't of Human Res. v. Johnson, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

Cited in Johnson v. Ga. Dep't of Human Res., 278 Ga. 714, 606 S.E.2d 270 (2004).

49-5-61. Requirement of separate license and separate director for each new facility.

An applicant for a new license shall have a separate license for each new facility in this state owned or operated by that applicant and shall have a separate director for each such facility. (Code 1981, § 49-5-61, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 2004, p. 645, § 11.)

49-5-62. Records check application for director of new facility; preliminary records check for employees.

Accompanying any application for a new license for a facility, the applicant shall furnish to the department a records check application for the director and a satisfactory preliminary records check for each employee of such facility. In lieu of such records check applications, the applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months the director received satisfactory state and national fingerprint records check determinations and each employee received a satisfactory preliminary records check determination, or that any employee other than the director whose preliminary records check revealed a criminal record of any kind has either subsequently received satisfactory state and national fingerprint records check determinations or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. The department may either perform preliminary records checks under agreement with GCIC or contract with GCIC and appropriate law enforcement agencies which have access to GCIC information to have those agencies perform for the department a preliminary records check for each preliminary records check application submitted thereto by the department. Either the department or the appropriate law enforcement agencies may charge reasonable fees for performing preliminary records checks. (Code 1981, § 49-5-62, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1999, p. 539, § 2; Ga. L. 1999, p. 574, § 4.)

49-5-63. Notice of determination; issue of license; effect of unsatisfactory determination.

After being furnished the required records check application under Code Section 49-5-62, the department shall notify in writing the license applicant as to each person for whom an application was received regarding whether the department's determination as to that person's state fingerprint records check was satisfactory or unsatisfactory. If the preliminary records check determination was satisfactory as to each employee of an applicant's facility and the state fingerprint records check was satisfactory as to the director, that applicant may be issued a license for that facility if the applicant otherwise qualifies for a license under Article 1 of this chapter. If the state or national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, the applicant shall designate another director for that facility after receiving notification of the determination and proceed under Code Section 49-5-62 and this Code section to obtain state and national fingerprint records checks for that newly designated director. If the preliminary records check for any employee other than the director revealed a criminal record of any kind, such employee shall not be allowed to work in the center until he or she either has obtained satisfactory state and national fingerprint records check

determinations or has had the unsatisfactory determination reversed in accordance with Code Section 49-5-73. If the determination was unsatisfactory as to any employee of an applicant's facility, the applicant shall, after receiving notification of that determination, take such steps as are necessary so that such person is no longer an employee. Any employee other than the director who receives a satisfactory preliminary records check shall not be required to obtain a fingerprint records check unless such an employee has been designated as a director or as permitted by the provisions of subsection (c) of Code Section 49-5-69. (Code 1981, § 49-5-63, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1986, p. 10, § 49; Ga. L. 1987, p. 1416, § 2; Ga. L. 1999, p. 539, § 3; Ga. L. 1999, p. 574, § 5.)

49-5-64. Fingerprint records check.

The department shall transmit to GCIC both sets of fingerprints and the records search fee from each fingerprint records check application. Upon receipt thereof, GCIC shall promptly transmit one set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and an appropriate report and shall retain the other set and promptly conduct a search of its records and records to which it has access. Within ten days after receiving fingerprints acceptable to GCIC, the application, and fee, GCIC shall notify the department in writing of any derogatory finding, including but not limited to any criminal record, of the state fingerprint records check or if there is no such finding. After a search of Federal Bureau of Investigation records and fingerprints and upon receipt of the bureau's report, the department shall make a national fingerprint records determination. (Code 1981, § 49-5-64, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 3; Ga. L. 1999, p. 539, § 4; Ga. L. 1999, p. 574, § 6.)

49-5-65. Determination on the basis of fingerprint records check; revocation of license.

After receiving a Federal Bureau of Investigation report regarding a national fingerprint records check under Code Section 49-5-64, the department shall make a determination based thereon and notify in writing the license applicant as to whether that records check was satisfactory or unsatisfactory. If the national fingerprint records check determination was unsatisfactory as to the director of an applicant's facility, after receiving notification of that determination, that applicant shall designate another director for such facility for which director the applicant has not received or made an unsatisfactory preliminary or fingerprint records check determination and proceed under the requirements of Code Sections 49-5-62 through 49-5-64 and this Code section to obtain state and national fingerprint records check determinations for the newly designated director. The director may begin working upon the receipt of a satisfactory state

fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. The department may revoke the license of that facility if the facility fails to comply with the requirements of this Code section and Code Section 49-5-63 to receive satisfactory state and national fingerprint determinations on the director or to comply with Code Section 49-5-63 regarding employees other than the director. (Code 1981, § 49-5-65, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 4; Ga. L. 1999, p. 539, § 5; Ga. L. 1999, p. 574, § 7.)

Code Commission notes. — Pursuant to sentence “49-5-64 and this Code section” Code Section 28-9-5, in 1986, in the second was substituted for “49-5-65”.

49-5-65.1. Employment of persons who have entered plea of guilty or nolo contendere to specified offenses.

Repealed by Ga. L. 2004, p. 645, § 12, effective October 1, 2004.

Editor’s notes. — This Code section was based on Code 1981, § 49-5-65.1, enacted by Ga. L. 1997, p. 713, § 2.

49-5-66. Separate license and center.

Each center shall be required to obtain a separate license and shall have a separate director for each center. (Code 1981, § 49-5-66, enacted by Ga. L. 1984, p. 1397, § 1; Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 5; Ga. L. 1999, p. 539, § 6; Ga. L. 1999, p. 574, § 8.)

49-5-67. Fingerprint records check application for director of existing facility; preliminary records check for employees; annual license.

As an alternative to the requirements set out in this article pertaining to obtaining preliminary criminal records check determinations through the department for employees, foster parents, and adults residing in a foster care home, but not including directors of centers, centers may obtain GCIC information through local law enforcement agencies. The center shall be responsible for reviewing the GCIC information obtained for the potential employee, or foster parent or other adult residing in the foster care home, and making a written determination that the individual does not have a criminal record as defined in this article. This written determination, together with all supporting documentation received from any law enforcement agency, must be maintained in the center’s file and available for inspection by the department. This satisfactory determination must be made before the employee or foster parent begins any duties for the center. However, where there is an urgent need for an emergency temporary employee to work at a center’s facility in order to avoid immediate noncompliance with staffing requirements, such center may utilize the

applicant as an emergency temporary employee after applying for the preliminary records check through the local law enforcement agency and completing the affidavit. In such emergency situations, the director of the center must complete an affidavit, with all supporting documentation attached thereto, stating that the GCIC information has been requested through an identified local law enforcement agency and that the results were not immediately available to the center prior to assigning the employee to work with children at the center's facility in order to avoid immediate noncompliance with staffing ratios. The affidavit with supporting documentation must be maintained in the center's file on the individual and available to the department for inspection. The director shall review the GCIC information upon receipt, but in no case shall an emergency temporary employee be permitted to continue working for more than three days without having a satisfactory determination made by the director and entered into the center's file on the employee with all supporting documentation. The department shall promulgate rules and regulations limiting the extent to which centers are authorized to use emergency temporary employees in accordance with this Code section. Foster parents and adults residing in a foster care home utilized by child-placing agencies shall never be utilized as emergency temporary employees of the child-placing agency. Employees, emergency temporary employees, foster parents, and other adults required to have records checks who are utilized by centers are subject to all other requirements set forth in this article. Where the department has reason to question the validity of the GCIC information or the satisfactory determination made by the center, the department may require the employee, emergency temporary employee, foster parent, or other adult to submit a preliminary criminal records check application through the department together with appropriate fees. (Code 1981, § 45-5-67, enacted by Ga. L. 1999, p. 539, § 7; Ga. L. 1999, p. 574, § 9; Ga. L. 2004, p. 333, § 3; Ga. L. 2004, p. 645, § 13.)

Editor's notes. — Former Code Section 49-5-67 (Ga. L. 1984, p. 1397, § 1 and Ga. L. 1985, p. 963, § 1), relating to fingerprint records check, was repealed by Ga. L. 1987, p. 1416, § 6, effective July 1, 1987.

49-5-68. Change of director.

(a) If the director of a facility which has been issued a license ceases to be the director of that facility, the licensee shall thereupon designate a new director. After such change, the licensee of that facility shall notify the department of such change and of any additional information the department may require regarding the newly designated director of that facility. Such information shall include but not be limited to any information the licensee may have regarding preliminary or any fingerprint records check determinations regarding that director. After receiving a change of director notification, the department shall make a written determination from the information furnished with such notification and the department's own

records as to whether satisfactory or unsatisfactory preliminary or state and national fingerprint records check determinations have ever been made for the newly designated director. If the department determines that such director within 12 months prior thereto has had satisfactory state and national fingerprint records check determinations, such determinations shall be deemed to be satisfactory state and national fingerprint records check determinations as to that director. The license of that facility shall not be adversely affected by that change in director, and the licensee shall be so notified.

(b) If the department determines under subsection (a) of this Code section that there has ever been an unsatisfactory preliminary or state or national fingerprint records check determination of the newly designated director which has not been legally reversed, the center and that director shall be so notified. The license for that director's facility shall be indefinitely suspended or revoked unless the center designates another director for whom it has not received or made an unsatisfactory preliminary or state or national fingerprint records check determination and proceeds pursuant to the provisions of this Code section relating to a change of director.

(c) If the department determines under subsection (a) of this Code section that there have been no state and national fingerprint records check determinations regarding the newly designated director within the immediately preceding 12 months, the department shall so notify the center. The center shall furnish to the department the fingerprint records check application of the newly designated director after the date the notification is sent by the department or the license of that facility shall be indefinitely suspended or revoked. If that fingerprint records check application is so received, unless the department has within the immediately preceding 12 months made a satisfactory state fingerprint records check determination regarding the newly designated director, the department shall perform a state fingerprint records check determination of the newly designated director; and the applicant and that director shall be so notified. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section regarding procedures after notification shall apply. If that determination is satisfactory, the department shall perform a national fingerprint records check determination for that director as provided in Code Sections 49-5-64 and 49-5-65. The director may begin working upon the receipt of a satisfactory state fingerprint records check determination pending the receipt of the national fingerprint records check determination from the department. If that determination is satisfactory, the center and director for whom the determination was made shall be so notified after the department makes its determination, and the license for the facility at which that person is the newly designated director shall not be adversely affected by that change of director. If that determination is unsatisfactory, the provisions of subsection (b) of this Code section shall

apply. (Code 1981, § 49-5-69, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-68, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 7; Ga. L. 1999, p. 539, § 8; Ga. L. 1999, p. 574, § 10.)

Editor's notes. — Former Code Section 49-5-68, as enacted by Ga. L. 1984, p. 1397, § 1, relating to requirement that director of a facility not be subjected to more than one fingerprint check during his tenure, was repealed by Ga. L. 1985, p. 963, § 1, effective July 1, 1985. Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-69 as this Code section.

49-5-69. Employment requirements; suspension or revocation of license or criminal penalty for violations.

(a) Before a person may become an employee other than a director of any center after that center has received a license, that center shall require that person to obtain a satisfactory preliminary records check. The center shall maintain documentation in the employee's personnel file, which is available to the department upon request, which reflects that a satisfactory preliminary criminal records check was received before the employee began working with children. If the preliminary records check for any potential employee other than the director reveals a criminal record of any kind, such potential employee shall not be allowed to begin working until either such potential employee has obtained satisfactory state and national fingerprint records check determinations or has had the unsatisfactory preliminary or fingerprint records check determination reversed in accordance with Code Section 49-5-73. If either the preliminary or state or national fingerprint records determination is unsatisfactory, the center shall, after receiving notification of the determination, take such steps as are necessary so that such person is no longer an employee. Any potential employee other than the director who receives a satisfactory preliminary records check determination shall not be required to obtain a fingerprint records check determination except as permitted in accordance with subsection (c) of this Code section.

(b) A license is subject to suspension or revocation and the department may refuse to issue a license if a director or employee does not undergo the records and fingerprint checks applicable to that director or employee and receive satisfactory determinations.

(c) After the issuance of a license, the department may require a fingerprint records check on any director or employee to confirm identification for records search purposes, when the department has reason to believe the employee has a criminal record that renders the employee ineligible to have contact with children in the center, or during the course of a child abuse investigation involving the director or employee.

(d) No center may hire any person as an employee unless there is on file in the center an employment history and a satisfactory preliminary records

check or, if the preliminary records check determination revealed a criminal record of any kind as to such person, either satisfactory state and satisfactory national records check determinations for that person or proof that an unsatisfactory determination has been reversed in accordance with Code Section 49-5-73.

(e) A director of a facility having an employee whom that director knows or should reasonably know to have a criminal record that renders the employee ineligible to have contact with children in the center shall be guilty of a misdemeanor. (Code 1981, § 49-5-70, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-69, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1987, p. 1416, § 8; Ga. L. 1999, p. 539, § 9; Ga. L. 1999, p. 574, § 11; Ga. L. 2004, p. 645, § 14; Ga. L. 2006, p. 72, § 49/SB 465.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-69 as Code Section 49-5-68. Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-70 as this Code section.

49-5-69.1. Fingerprint and preliminary records check for foster homes; notice of results; violations; foster parents known to have criminal records.

(a) No licensed child welfare agency, as defined in subsection (a) of Code Section 49-5-12, shall place a child in a foster care home unless the foster parent or parents of the home and other adult persons that reside in the home or provide care to children placed in the home have received a satisfactory preliminary records check determination. Additionally, no child shall continue to be placed in such foster care home unless the foster parent or parents also subsequently receive a satisfactory fingerprint records check determination. A child welfare agency or any applicant for a license for such an agency shall be required to submit to the department a preliminary records check application and a records check application for the foster parent or parents of any foster care home used by the agency and a preliminary records check application for any other adult persons that reside in the home or provide care to children placed in the home. In lieu of such applications, the agency or license applicant may submit evidence, satisfactory to the department, that within the immediately preceding 12 months such foster parent or parents or other adult persons have received a satisfactory fingerprint records check determination or a satisfactory preliminary records check determination.

(b) After receiving or obtaining the fingerprint records check determinations or the preliminary records check determinations, the department shall notify in writing the agency or license applicant as to each person for whom an application was received regarding whether the department's determinations were satisfactory or unsatisfactory. If any such determinations are unsatisfactory, such homes shall not be used by the child welfare agency as foster care homes.

(c) The department shall have the authority to take any of the actions enumerated in subsection (c) of Code Section 49-2-17 if a licensed child welfare agency or an applicant for such a license violates any provision of this Code section.

(d) An executive director of a child welfare agency that uses a foster care home with a foster parent or parents or other adult persons referenced in this Code section whom the executive director knows or should reasonably know to have a criminal record shall be guilty of a misdemeanor.

(e) In addition to any other requirement established by law, the submission of fingerprints shall be a prerequisite to the issuance of a license or authorization for the operation of a foster home or to serve as foster parents as provided in this article. Such fingerprints shall be used for the purposes of fingerprint checks by the Georgia Crime Information Center and the Federal Bureau of Investigation. (Code 1981, § 49-5-69.1, enacted by Ga. L. 1993, p. 757, § 2; Ga. L. 1994, p. 409, § 2; Ga. L. 1999, p. 539, § 10; Ga. L. 2009, p. 453, § 2-24/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsections (a) through (d), substituted “child welfare agency” for “child-placing agency” throughout; in the first sentence of subsection (a), substituted “subsection (a) of Code Section 49-5-12” for

“this chapter”; and, near the middle of subsection (c), substituted “Code Section 49-2-17” for “Code Section 31-2-6”.

Law reviews. — For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 258 (1994).

49-5-70. Required cooperation among state agencies; unauthorized use of criminal history record information.

(a) GCIC and law enforcement agencies which have access to GCIC information shall cooperate with the department in performing preliminary and fingerprint records checks required under this chapter and shall provide such information so required for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this chapter, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 49-5-71, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-70, as redesignated by Ga. L. 1985, p. 963, § 1.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, had the effect of redesignating former Code Section 49-5-70 as Code Section 49-5-69.

Ga. L. 1985, p. 963, § 1, also redesignated former Code Section 49-5-71 as this Code section.

49-5-71. Immunity from liability for centers, state agencies, and employees.

(a) Neither GCIC, the department, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article.

(b) A center or a child-placing agency, its director, and its employees shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the requirements of this article. (Code 1981, § 49-5-72, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-71, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1993, p. 757, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, a comma was inserted following “director” in subsection (b).

Editor’s notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-71 as Code Section 49-5-70 and former Code Section 49-5-72 as this Code section.

49-5-72. Supplemental nature of article’s requirements.

The requirements of this article are supplemental to any requirements for a license imposed by Article 1 of this chapter. (Code 1981, § 49-5-73, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-72, as redesignated by Ga. L. 1985, p. 963, § 1.)

Editor’s notes. — Ga. L. 1985, p. 963, § 1, redesignated former Code Section 49-5-72 as

Code Section 49-5-71 and former Code Section 49-5-73 as this Code section.

49-5-73. Applicability of “Georgia Administrative Procedure Act”; consideration of matters in mitigation of conviction.

A determination by the department regarding preliminary or fingerprint records checks under this article, or any action by the department revoking, suspending, or refusing to grant or renew a license based upon such determination, shall constitute a contested case for purposes of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act,” except that any hearing required to be held pursuant thereto may be held reasonably expeditiously after such determination or action by the department. It is expressly provided that upon motion from any party, the hearing officer may, in his discretion, consider matters in mitigation of any conviction, provided the hearing officer examines the circumstances of the case and makes an independent finding that no physical harm was done to a victim and also examines the character and employment history since the conviction and determines that there is no propensity for cruel behavior or behavior involving moral turpitude on the part of the person making a motion for an exception to sanctions normally imposed. If the hearing

officer deems a hearing to be appropriate, he will also notify at least 30 days prior to such hearing the office of the prosecuting attorney who initiated the prosecution of the case in question in order to allow the prosecutor to object to a possible determination that the conviction would not be a bar for the grant or continuation of a license or employment as contemplated within this title. If objections are made, the hearing officer will take such objections into consideration in considering the case. (Code 1981, § 49-5-74, enacted by Ga. L. 1984, p. 1397, § 1; Code 1981, § 49-5-73, as redesignated by Ga. L. 1985, p. 963, § 1; Ga. L. 1988, p. 1605, § 2.)

Editor's notes. — Ga. L. 1985, p. 963, § 1, Code Section 49-5-72 and former Code Section 49-5-73 as redesignated former Code Section 49-5-73 as this Code section.

49-5-74. Administration of article.

The department is authorized to provide by regulation for the administration of this article. (Code 1981, § 49-5-74, enacted by Ga. L. 1985, p. 963, § 1.)

Editor's notes. — Former Code Section 49-5-74 was redesignated as Code Section 49-5-73 by Ga. L. 1985, p. 963, § 1.

ARTICLE 4

EMERGENCY PROTECTION OF CHILDREN IN CERTAIN INSTITUTIONS

Code Commission notes. — Ga. L. 1986, p. 662, § 1 and Ga. L. 1986, p. 669, § 1 both enacted an Article 4 of Chapter 5 of Title 49. Pursuant to Code Section 28-9-5, in 1986, the article enacted by the latter Act was redesignated as Article 5 of this chapter and the Code sections in that article, which were enacted as Code Sections 49-5-90 through 49-5-94, were redesignated as Code Sections 49-5-110 through 49-5-114.

49-5-90. Definitions.

As used in this article, the term:

- (1) "Child in care" means any person under the age of 17 years who has been admitted to, is cared for, or resides in a facility.
- (2) "Commissioner" means the commissioner of human services or his designee.
- (3) "Corrective order" means an order by the commissioner detailing the findings of the commissioner or his designee regarding violations of law or rules or regulations of the department by an institution or other conditions threatening the health and safety of residents of the institution and the changes which the commissioner has ordered.
- (4) "Department" means the Department of Human Services.

(5) “Emergency order” or “order” means a written directive by the commissioner or his designee ordering the emergency relocation of residents, prohibiting admissions, or placing a monitor in a facility.

(6) “Guardian” means a minor’s parent, legal guardian, or conservator.

(7) “Facility” means a child-caring institution or child welfare agency subject to licensure under the provisions of Article 1 of this chapter, unless specifically exempted by the rules and regulations.

(8) “Monitor” means a person, designated by the department, to remain on-site in a facility, as an agent of the department, observing conditions.

(9) “Preliminary hearing” means a hearing held by the department as soon as possible after the order is entered at the request of a facility which has been affected by an emergency order placing a monitor in the facility, relocating residents, or prohibiting admissions in accordance with Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 49-5-90, enacted by Ga. L. 1986, p. 662, § 1; Ga. L. 2009, p. 453, §§ 2-2, 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human resources” in paragraph (2), and substituted

“Department of Human Services” for “Department of Human Resources” in paragraph (4).

49-5-91. Emergency orders; corrective orders; monitors.

(a) Emergency orders may be issued by the commissioner or his designee pursuant to findings by the department pursuant to surveys, inspections, or investigations, which are required or permitted by law, that departmental rules and regulations are being violated which threaten the health, safety, or welfare of children in care.

(b)(1)(A) The commissioner may order the emergency relocation of residents from a child-caring institution other than a day-care facility subject to licensure under this chapter when the commissioner has determined that the residents are subject to an imminent and substantial danger.

(B) When an order is issued under this subsection, the commissioner shall provide for:

(i) Notice to the resident, his next of kin or guardian, and, where appropriate, his physician, of the emergency relocation and the reasons therefor;

(ii) Relocation to the nearest appropriate child-caring institution; and

(iii) Other protection designed to ensure the welfare and, when possible, the desires of the resident and his next of kin or guardian.

(2)(A) The commissioner or his designee may order the emergency placement of a monitor or monitors in a facility upon a finding that department rules and regulations are being violated which threaten the health, safety, or welfare of children in care and when one or more of the following conditions are present:

(i) The facility is operating without a permit;

(ii) The department has denied application for permit or has initiated action to revoke the existing permit of the facility; or

(iii) Children are suspected of being subjected to injury or life-threatening situations or the health or safety of the child or children is in danger.

(B) A monitor may be placed in a facility for no more than ten consecutive calendar days, during which time the monitor shall observe conditions and regulatory compliance with any recommended remedial action of the department. Upon expiration of the ten-day period, should the conditions warrant, the initial ten-day period may be extended for an additional ten-day period. The monitor shall report to the department. The monitor shall not assume any administrative responsibility within the facility, nor shall the monitor be liable for any actions of the facility. The salary and related costs and travel and subsistence allowance as defined by department policy of placing a monitor in a facility shall be reimbursed to the department by the facility, unless the order placing the monitor is determined to be invalid in a contested case or by final adjudication by a court of competent jurisdiction, in which event the cost shall be paid by the department.

(3)(A) The commissioner may order the emergency prohibition of admissions to a child-caring institution other than a day-care facility subject to licensure under this chapter when residents of an institution are in imminent and substantial danger or the institution has failed to correct a violation of departmental permit rules or regulations within a reasonable period of time, as specified in the department's corrective order, and the violation:

(i) Could jeopardize the health and safety of the residents in the institution if allowed to remain uncorrected; or

(ii) Is a repeat violation over a 12 month period.

(B) Admission to an institution may be suspended until the violation has been corrected or until the department has determined that the institution has undertaken the action necessary to effect correction of the violation.

(c) An emergency order shall contain the following:

- (1) The scope of the order;
- (2) The reasons for the issuance of the order;
- (3) The effective date of the order if other than the date the order is issued;
- (4) The person to whom questions regarding the order are to be addressed; and
- (5) Notice of the right to a preliminary hearing.

(d) Unless otherwise provided in the order, an emergency order shall become effective upon its service. Service of an emergency order may be made upon the owner of the facility, the director of the facility, or any other agent, employee, or person in charge of the facility at the time of the service of the order.

(e) Prior to issuing an emergency order to order the emergency relocation of residents, to prohibit admissions, or to require placement of a monitor in a facility which has been classified by the department as a child-caring institution or child welfare agency, the commissioner or his designee may consult with persons knowledgeable in the field of child care and a representative of the facility to determine if there is a potential for greater adverse effects on children in care as a result of the emergency order. (Code 1981, § 49-5-91, enacted by Ga. L. 1986, p. 662, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “situations” was substituted for “situation” in division (b)(2)(A)(iii).

49-5-92. Preliminary hearing; department order; interim department actions.

(a) A request for a preliminary hearing shall be made in writing within five days from the time of service, excepting weekends. The request must be made to the representative of the department designated in the order. Unless a request is made to appear in person, the preliminary hearing shall consist of an administrative review of the record, written evidence submitted by the institution affected, and a preliminary written argument in support of its contentions.

(b) If a request is made to appear in person at the preliminary hearing, the institution shall provide the name and address of the person or persons, if any, who will be representing the institution in the preliminary hearing.

(c) Upon receipt of a request for a preliminary hearing, the department shall set and give notice of the date, time, and location of the preliminary hearing. The preliminary hearing shall be held as soon as possible after a request therefor but in no event later than 72 hours after such request,

provided that an institution may request that such hearing be held earlier; provided, however, that in no event will a hearing be held on a weekend or holiday.

(d) If a personal appearance is requested, the preliminary hearing shall consist of a review of the evidence in the record, any additional evidence introduced at the hearing, and any arguments made. A recording shall be made of the hearing.

(e) The department shall, where practicable, issue an immediate oral order and shall, in all instances, issue a written order within four business days after the close of the hearing.

(f) Pending final appeal of the validity of any emergency order issued as provided in this Code section, such emergency order shall remain in full effect until vacated or rescinded by the commissioner or his designee.

(g) The department is not precluded from other actions permitted by other laws or regulations during the time an emergency order is in force. (Code 1981, § 49-5-92, enacted by Ga. L. 1986, p. 662, § 1.)

ARTICLE 5

RECORDS CHECKS FOR PERSONS SUPERVISING CHILDREN

Code Commission notes. — Ga. L. 1986, p. 662, § 1 and Ga. L. 1986, p. 669, § 1 both enacted an Article 4 of Chapter 5 of Title 49. Pursuant to Code Section 28-9-5, in 1986, the article enacted by the latter Act was redesignated as Article 5 of this chapter and the

Code sections in this article, which were enacted as Code Sections 49-5-90 through 49-5-94, were redesignated as Code Sections 49-5-110 through 49-5-114.

49-5-110. Definitions.

As used in this article, the term:

(1) "Conviction" means a finding or verdict of guilty or a plea of guilty.

(2) "Crime" means a violation of Code Section 16-5-23, relating to simple battery, when the victim is a minor; a violation of Code Section 16-5-24, relating to aggravated battery, when the victim is a minor; a violation of Code Section 16-5-70, relating to cruelty to children; a violation of Code Section 16-12-1, relating to contributing to the delinquency of a minor; a violation of Chapter 6 of Title 16, relating to sexual offenses, excluding the offenses of bigamy or marrying a bigamist; a felony violation of Chapter 13 of Title 16, relating to controlled substances; a violation of Code Section 16-5-1, relating to murder and felony murder; a violation of Code Section 16-4-1, relating to criminal attempt as it concerns attempted murder; or any other offense committed in another jurisdiction which, if committed in this state, would be deemed to be one of the enumerated crimes listed in this paragraph.

(3) "Criminal record" means:

(A) Conviction of a crime;

(B) Arrest, charge, and sentencing for a crime where adjudication or sentence was otherwise withheld or not entered on the charge; provided, however, that this subparagraph shall not apply to a violation of Chapter 13 of Title 16, relating to controlled substances, or any other offense committed in another jurisdiction which, if it were committed in this state, would be a violation of Chapter 13 of Title 16 if such violation or offense constituted only simple possession; or

(C) Arrest and being charged for a crime if the charge is pending, unless the time for prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

(4) "Employer" means any person, organization, corporation, or political subdivision which employs or uses the services of paid employees or volunteers in positions in which the employee or volunteer has supervisory or disciplinary power over a child or children.

(5) "GCIC" means the Georgia Crime Information Center established under Article 2 of Chapter 3 of Title 35.

(6) "GCIC information" means criminal history record information as defined in Code Section 35-3-30.

(7) "Records check" means a records check comparison of GCIC information.

(8) "Records check application" means a set of classifiable fingerprints, a records search fee in an amount to be determined by the Georgia Bureau of Investigation to cover the reasonable cost of such records check, payable in such form as the GCIC may direct to cover the cost of a records check under this article, and an affidavit by the applicant consenting to a records check and disclosing the nature and date of any arrest, charge, or conviction of the applicant for the violation of any law, except for motor vehicle parking violations, whether or not the violation occurred in this state. (Code 1981, § 49-5-110, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-111. Employers authorized to make records checks; procedure.

(a) On and after July 1, 1986, an employer may require that a new or current employee or volunteer submit to a records check for the purpose of determining whether such person has ever been convicted of a crime or has a criminal record.

(b) An employer seeking a records check on an employee shall submit a records check application to the GCIC. Upon receipt thereof, the GCIC

shall promptly conduct a search of its records and records to which it has access. Within a reasonable time after receiving the application, the GCIC shall notify the employer in writing of any criminal record finding or of the fact of no such finding. (Code 1981, § 49-5-111, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-112. Cooperation of law enforcement agencies; penalty for false information.

(a) The GCIC and law enforcement agencies which have access to GCIC information shall cooperate with employers who are authorized to obtain records checks on their employees in performing such checks and shall provide such information for such records checks notwithstanding any other law to the contrary and may charge reasonable fees therefor.

(b) Any person who knowingly and under false pretenses requests, obtains, or attempts to obtain GCIC information otherwise authorized to be obtained pursuant to this article, or who knowingly communicates or attempts to communicate such information obtained pursuant to this article to any person or entity except in accordance with this article, or who knowingly uses or attempts to use such information obtained pursuant to this article for any purpose other than as authorized by this article shall be fined not more than \$5,000.00, imprisoned for not more than two years, or both. (Code 1981, § 49-5-112, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-113. Personal liability; disciplinary action.

(a) Other than for a knowing and malicious release of false information, neither GCIC, any law enforcement agency, nor the employees of any such entities shall be responsible for the accuracy of information nor have any liability for defamation, invasion of privacy, negligence, or any other claim in connection with any dissemination of information or determination based thereon pursuant to this article. However, no employee shall be suspended or dismissed from such employee's job due to any information provided in a records check until the employer obtains a certified copy of the original documents on which the charges identified in the records check are based.

(b) An employer shall have no liability for defamation, invasion of privacy, or any other claim based upon good faith action thereby pursuant to the provisions of this article. Any disciplinary action of any kind taken against any local school board employee and based in whole or in part on information obtained through a records check as provided in this article shall be subject to and governed by the provisions of Code Section 20-2-940. (Code 1981, § 49-5-113, enacted by Ga. L. 1986, p. 669, § 1.)

49-5-114. Other laws requiring records checks.

This article shall be cumulative of and in addition to any other law requiring or permitting employees' records checks and shall not relieve any person from any duty or requirement under such other laws. (Code 1981, § 49-5-114, enacted by Ga. L. 1986, p. 669, § 1.)

ARTICLE 6**PROGRAMS AND PROTECTION FOR CHILDREN****PART 1****GOVERNOR'S OFFICE FOR CHILDREN AND FAMILIES**

Effective date. — This part became effective July 1, 2008.

Editor's notes. — Ga. L. 2008, p. 568, § 9, effective July 1, 2008, repealed the Code sections formerly codified at this part and enacted the current part. The former part consisted of Code Sections 49-5-130 through 49-5-135, relating to general provisions regarding programs and protection for children, and was based on Ga. L. 1987, p. 1576, § 1; Ga. L. 1990, p. 1871, § 2; Ga. L. 1991, p. 435, §§ 2-7; Ga. L. 1992, p. 1983, § 32; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 20, § 28; Ga. L. 2000, p. 1098, § 1; Ga. L. 2001, p. 312, § 1.

Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned ef-

forts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

Cross references. — Child abuse and neglect prevention, Ch. 14, T. 19.

49-5-130. Legislative findings and intent.

The General Assembly finds and declares:

(1) That the future of this state depends on our supporting and nurturing the creation and development of strong, safe, stable, and successful families. Therefore, the General Assembly is committed to ensuring the provision of appropriate services to children, youth, and families. The intent of this article is to provide for the effective coordination and communication between providers of prevention and early intervention services for children and youth and juvenile justice and child welfare systems at all levels of state government;

(2) That consolidating multiple child welfare and juvenile justice funding and policy agencies into a single agency with authority to address the needs of at-risk children from birth through adolescence will create a more unified, consistent approach to addressing the needs of our state's children and youth; and

(3) Its intent to reduce the number of children committed by the courts to institutions operated by the Department of Juvenile Justice and the Department of Human Services or other state agencies and to provide a preventative, comprehensive plan for the development of community based alternatives so that children who have committed delinquent acts and children who are at risk of becoming dependents of state government and its institutions may not have to be committed to a state detention facility or other such facility. Additionally, it is the intent of this part to provide for noninstitutional disposition options in any case before the juvenile court where such disposition is deemed to be in the best interest of the child and of the community. (Code 1981, § 49-5-130, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the first sentence of paragraph (3).

49-5-131. Definitions.

As used in this part, the term:

(1) "Board" means the advisory board to the Governor's Office for Children and Families created pursuant to Code Section 49-5-134.

(2) "Child" means a person under the age of 17 years or a person under the age of 18 years who is alleged to be deprived or is alleged to be a status offender as those terms are defined by Code Section 15-11-2.

(3) "Director" means the executive director of the Governor's Office for Children and Families.

(4) "Fund" means the Children's Trust Fund created pursuant to Code Section 19-14-20.

(5) "Neglect" means harm to a child's health or welfare by a person responsible for the child's health or welfare which occurs through negligent treatment, including the failure to provide adequate food, clothing, shelter, or medical care.

(6) "Office" means the Governor's Office for Children and Families created pursuant to Code Section 49-5-132.

(7) "Prevention program" means a system of direct provision of child abuse and neglect prevention services to a child, parent, or guardian and

may include research or educational programs related to prevention of child abuse and neglect. (Code 1981, § 49-5-131, enacted by Ga. L. 2008, p. 568, § 9/HB 1054; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, deleted the subsection (a) designation as there was no subsection (b).

49-5-132. Governor's Office of Children and Families established; funding; duties and responsibilities.

(a) There is established the Governor's Office for Children and Families which shall be assigned to the Governor's Office of Planning and Budget for administrative purposes.

(b) The office shall be the successor entity to the Children and Youth Coordinating Council and to the Children's Trust Fund Commission and shall assume the continuing responsibilities, duties, rights, staff, contracts, debts, liabilities, and authorities of those bodies, any law to the contrary notwithstanding.

(c) The office may accept federal funds granted by Congress or executive order for the purposes of the fund as well as gifts and donations from individuals, private organizations, or foundations. The acceptance and use of federal funds does not commit state funds and does not place an obligation upon the General Assembly to continue the purposes for which the federal funds are made available. All funds received in the manner described in this Code section shall be transmitted to the director of the Office of Treasury and Fiscal Services for deposit in the fund to be disbursed as other moneys in such fund.

(d) The office is further vested with authority to carry out the following duties and responsibilities in consultation with the board:

(1) To carry out the prevention and community based service programs as provided for in Part 2 of this article;

(2) To carry out the duties relating to mentoring as provided for in Part 3 of this article;

(3) To cooperate with and secure cooperation of every department, agency, or instrumentality in the state government or its political subdivisions in the furtherance of the purposes of this article;

(4) To prepare, publish, and disseminate fundamental child related information of a descriptive and analytical nature to all components of the children's service system of this state, including, but not limited to, the juvenile justice system;

(5) To serve as a state-wide clearing-house for child related information and research;

(6) In coordination and cooperation with all components of the children's service systems of this state, to develop legislative proposals and executive policy proposals reflective of the priorities of the entire child related systems of this state, including, but not limited to, child abuse injury prevention, treatment, and juvenile justice systems;

(7) To serve in an advisory capacity to the Governor on issues impacting the children's service systems of this state;

(8) To coordinate high visibility child related research projects and studies with a state-wide impact when those studies and projects cross traditional system component lines;

(9) To provide for the interaction, communication, and coordination of all components of the children's service systems of this state and to provide assistance in establishing state-wide goals and standards in the system;

(10) To provide for the effective coordination and communication between providers of children and youth services, including pediatrics, health, mental health, business and industry, and all components of social services, education, and educational services;

(11) To encourage and facilitate the establishment of local commissions or coalitions on children and youth and to facilitate the involvement of communities in providing services for their children and youth;

(12) To review and develop an integrated state plan for services provided to children and youth in this state through state programs;

(13) To provide technical assistance and consultation to members of the council and local governments, particularly those involved in providing services to their children and youth;

(14) To facilitate elimination of unnecessary or duplicative efforts, programs, and services; and

(15) To do any and all things necessary and proper to enable it to perform wholly and adequately its duties and to exercise the authority granted to it. (Code 1981, § 49-5-132, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

49-5-133. Executive director; cooperation with Office of the Child Advocate for the Protection of Children.

(a) There shall be an executive director of the office who shall be appointed by and serve at the pleasure of the Governor.

(b) The director may contract with other agencies, public or private, or persons as the director deems necessary for the rendering and affording of such services, facilities, studies, research, and reports as will best enable the

office to carry out its functions, responsibilities, and duties under this article. The director is specifically authorized to enter into cooperative contracts for the sharing of staff expertise and personnel with the Office of the Child Advocate for the Protection of Children. (Code 1981, § 49-5-133, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

49-5-134. Advisory board established; membership; officers and committees; compensation.

(a) There is established an advisory board to the office which shall consist of at least 15 members appointed by the Governor who as a group have training, experience, or special knowledge concerning the prevention and treatment of child abuse and neglect, emotional disability, foster care, teenage pregnancy, juvenile delinquency, law enforcement, pediatrics, health care, drug treatment and rehabilitation, early childhood, primary and secondary education, or the administration of juvenile justice.

(b) At least one-fifth of the members of the advisory board shall be under the age of 24 at the time of their appointment, and at least three members shall have been or shall currently be under the jurisdiction of the juvenile justice system or the foster care system. A single member may fulfill both of the above requirements.

(c) Membership on the advisory board does not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(d) The advisory board shall elect a chairperson from among its membership. The advisory board may elect such other officers and committees as it considers appropriate.

(e) Members shall serve without compensation, although each member of the advisory board shall be reimbursed for actual expenses incurred in the performance of his or her duties from funds available to the office. Such reimbursement shall be limited to all travel and other expenses necessarily incurred through service on the advisory board, in compliance with travel rules and regulations. However, in no case shall a member of the advisory board be reimbursed for expenses incurred in the member's capacity as the representative of another state agency. (Code 1981, § 49-5-134, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

49-5-135. Powers and duties of advisory board; disbursement of appropriated moneys from fund.

(a) The advisory board shall:

(1) Meet at such times and places as it shall determine necessary or convenient to perform its duties. The advisory board shall also meet on the call of the chairperson, the director, or the Governor;

- (2) Maintain minutes of its meetings;
 - (3) Adopt rules and regulations for the transaction of its business;
 - (4) In consultation with the office, establish criteria for determining eligibility for receipt of disbursements from the fund;
 - (5) Review applications for disbursements of available money from the fund for child abuse and neglect prevention purposes;
 - (6) In consultation with the office, administer federal assistance funds for the purposes mentioned in this article, including but not limited to funds under the Juvenile Justice and Delinquency Prevention Act;
 - (7) Maintain records of all expenditures of the funds received as gifts and donations, and disbursements made, from the fund and from other state and federal funds;
 - (8) Conform to the standards and requirements prescribed by the state accounting officer pursuant to Chapter 5B of Title 50;
 - (9) Using the combined expertise and experience of its members, provide regular advice and counsel to the director to enable the office to carry out its statutory duties under this article; and
 - (10) Carry out such duties of the office as may be required by federal law or regulation so as to enable the state to receive and disburse federal funds for child abuse prevention and treatment and juvenile delinquency prevention and treatment.
- (b) The advisory board may authorize the disbursement of available money from the fund after appropriation thereof to an entity or program eligible pursuant to the criteria of the office exclusively to fund a private nonprofit or public organization in the development or operation of a prevention program if all of the following conditions are met:
- (1) The organization demonstrates broad based community involvement emphasizing volunteer efforts and demonstrates expertise in child abuse prevention issues;
 - (2) The organization demonstrates a willingness and ability to provide program models and consultation to organizations and communities regarding program development and maintenance; and
 - (3) Other conditions that the board may deem appropriate.
- (c) Funds shall not be disbursed from the trust fund to any organization or other entity or for any purpose authorized in subsection (a) of this Code section until approved by the Governor; provided, however, that the Governor may not authorize the disbursement of funds to an organization or other entity which the office has not recommended for a grant. (Code 1981, § 49-5-135, enacted by Ga. L. 2008, p. 568, § 9/HB 1054.)

U.S. Code. — The Juvenile Justice and Delinquency Prevention Act, referred to in paragraph (a)(6), is codified principally at 42 U.S.C. § 5601 et seq.

PART 2

DELINQUENCY PREVENTION AND COMMUNITY BASED SERVICES

Administrative rules and regulations. — Georgia, Grant Programs, Grants of Child Title V Prevention, Official Compilation of the Rules and Regulations of the State of § 96-1-.02.

49-5-150. Legislative policy and intent.

The policy and intent of the General Assembly in delinquency and other child related problems and community based services can be summarized as follows:

(1) Such programs should be planned and organized at the community level within the state, and such planning efforts should include appropriate representation from local government, local agencies serving families and children, both public and private, local business leaders, citizens with an interest in youth problems, youth representatives, and others as may be appropriate in a particular community. The role of the state should be to provide technical assistance, access to funding, program information, and assistance to local leadership in appropriate planning;

(2) When a child is adjudicated to be within the jurisdiction of the juvenile court or other state agencies, such child should be carefully evaluated through the available community-level resources including a comprehensive team of mental health providers, social services providers, public health and other available medical providers, public schools, and others, as appropriate, prior to the juvenile hearing dealing with disposition so that the disposition of the court may be made with an understanding of the needs of the child and after consideration of the resources available to meet those needs;

(3) It is contrary to the policy of the state for a court to separate a child from his or her own family or commit a child to an institution without a careful evaluation of the needs of the child;

(4) The General Assembly finds that state and local government should be responsive to the need for community based services which would provide an alternative to commitment to an institution. The General Assembly intends that state government should be responsive to this need through the council by helping public and private local groups to plan, develop, and fund community based programs, both residential and nonresidential;

(5) It is the intent of the General Assembly that the council develop a funding mechanism that will provide state support for programs that

meet the standards developed under the provisions of this part. (Code 1981, § 49-5-150, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 8.)

Law reviews. — For note on 1991 amendment of O.C.G.A. §§ 49-5-150 through 49-5-155, see 8 Ga. St. U.L. Rev. 21 (1992).

49-5-151. Implementation of part.

It shall be the duty of the council to arrange for the implementation of this part as follows:

(1) To assist local governments and private service agencies in the development of community based programs and to provide information on the availability of potential funding sources and to provide whatever assistance may be requested in making application for needed funding;

(2) To approve yearly program evaluations and to make recommendations to the General Assembly concerning continuation funding that might be supported by that evaluation;

(3) To approve program evaluation standards by which all programs developed under the provisions of this part may be objectively evaluated. Such standards as may be developed for the purpose of program evaluation shall be in addition to any current standards as may be applicable under the existing authority of the department. Minimum operating standards as well as program evaluation standards as may be needed for new program models designed to fulfill the intent of this part may be developed at the discretion of the council;

(4) To develop a formula for funding on a matching basis community based services as provided for in this part. This formula may be based upon a county's or counties' relative ability to fund community based programs for children and youth. Local governments receiving state matching funds for programs under the provisions of this part must maintain the same overall level of effort that existed at the time of the filing of the county assessment of youth needs with the council;

(5) To provide yearly program evaluation of the effectiveness of delinquency and other prevention programs and community based services developed or supported under provisions of this part;

(6) To develop a program to coordinate the resources of state government within the appropriate departments to provide technical assistance to local areas within the state to assist them in planning delinquency and other prevention programs and community based services for youth, including but not limited to the following:

- (A) Study local youth needs;
 - (B) Gather data on children within the jurisdiction of the state systems;
 - (C) Evaluate resources for providing services or care to these children;
 - (D) Provide information about various program models which might be appropriate in relation to the needs of children and youth;
 - (E) Help in planning for evaluation; and
 - (F) Provide such other assistance as may be appropriate;
- (7) To encourage the development of delinquency and other prevention programs and community based services by private groups so that:
- (A) Such programs can be responsive to local needs;
 - (B) Local leadership and private groups can be responsible for their programs;
 - (C) Programs which meet state standards can be assisted by state and federal funding; and
 - (D) Available private funds can be appropriately utilized along with available state and federal funds;
- (8) To provide for the development of programs which have a plan for evaluation from the beginning so that successful program models can be replicated as appropriate; and
- (9) To provide for the development of delinquency and other prevention programs and community based services under public auspices where there is no local private leadership. (Code 1981, § 49-5-151, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the correct spelling of “existed” was substituted near the end of paragraph (4).

Pursuant to Code Section 28-9-5, in 1990, the subsection designation “(a)” was deleted, since there is no subsection (b).

49-5-152. Purchase of care or services from public or private agencies.

The council and any other appropriate state or local agency are authorized to purchase care or services from public or private agencies providing delinquency or other prevention programs or community based services, provided the program meets the state standards as authorized by Code Section 49-5-151. (Code 1981, § 49-5-152, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 10.)

49-5-153. Annual report.

The council shall prepare an annual report on the progress of the community based programs of this state which shall include the most current institutional and out-of-home placement populations of children being served by the various departments of state government and which shall include comparative costs of all children-serving agencies. Such report shall be submitted to the Governor and the various state departments providing services to children. The council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 49-5-153, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 11; Ga. L. 2005, p. 1036, § 40/SB 49.)

49-5-154. Study of youth needs.

The governing authority of each participating county shall establish a local advisory group which includes representation from each component of the local children's services systems and other interested parties. The advisory group shall appraise the council on the needs of children and youth in its community giving particular attention to the need for prevention programs and community based services, residential or nonresidential, which would provide an alternative to commitment to or placement or custody in the Department of Juvenile Justice or the Department of Human Services and placement in a youth development center, foster home, or any other institution. Such appraisal shall be made annually and in writing. The governing authority of the county may request technical assistance from the council in conducting such study. (Code 1981, § 49-5-154, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1990, p. 1871, § 3; Ga. L. 1991, p. 435, § 12; Ga. L. 1992, p. 1983, § 33; Ga. L. 1997, p. 1453, § 1; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Re- sources" in the second sentence of this Code section.

49-5-155. Effect of article on Department of Juvenile Justice; office as recipient entity for federal grants.

(a) This article shall in no way preempt, duplicate, or supersede services, duties, or other functions performed pursuant to law or regulations by the Department of Juvenile Justice.

(b) Other than the Department of Juvenile Justice, the Governor's Office for Children and Families created pursuant to Code Section 49-5-132 shall be the only other authorized controlling recipient entity for grants

under the United States Department of Justice Juvenile Justice Delinquency and Prevention Grants. (Code 1981, § 49-5-155, enacted by Ga. L. 1987, p. 1576, § 1; Ga. L. 1991, p. 435, § 13; Ga. L. 1992, p. 1983, § 34; Ga. L. 1997, p. 1453, § 1; Ga. L. 2008, p. 568, § 12/HB 1054.)

The 2008 amendment, effective July 1, 2008, substituted “Governor’s Office for Children and Families” for “Children and Youth Coordinating Council” in subsection (b).

Editor’s notes. — Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: “This Act may be cited as the ‘Children and Family Services Strengthening Act of 2008.’”

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: “The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and trou-

bled youth, and on promoting the improvement of our state’s child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state’s families in need.”

PART 3

MENTORING ACT OF 2000

Cross references. — Encouragement of formal partnerships and individual volunteering, § 20-2-1032.

49-5-156. Short title; legislative findings; development of program; awarding of grants; applications; recognition; reporting to General Assembly.

(a) This Code section shall be known and may be cited as the “Georgia Mentoring Act of 2000.”

(b) The General Assembly finds that:

(1) Every child in this state is encouraged to have a caring adult who, along with parents and teachers, is able to offer support, friendship, encouragement, and motivation to help the child excel academically and lead a productive life;

(2) As a society, we look to a child’s family to provide a supportive home environment and realize that the primary responsibility for child rearing must remain with the family. However, we are keenly aware of increases in child abuse and neglect, the escalation of drug and alcohol abuse, and that many children who could excel in school are not receiving all the help and support they need to succeed;

(3) Untapped human resources exist in local communities throughout the state that can provide many children with an additional caring, positive academic role model or mentor. These individuals will help those children progress in school and help direct and reinforce the many opportunities that will further enhance each child's life;

(4) The members of the private sector throughout this state should be commended for their generous financial support of public schools. Now there is another significant contribution they can and must make to Georgia's children and youth: the investment of human capital in our children's future as academic volunteers and mentors;

(5) Programs which provide encouragement and support to children through the use of mentors have resulted in significant increases in graduation rates at the secondary level and in much improved enrollment rates in postsecondary education for some of our most vulnerable youth;

(6) Local, regional, and state-wide resource referral systems must be established to link more efficiently children and potential academic volunteers and mentors with existing programs and organizations; and

(7) Volunteer and mentor service must be encouraged and appropriately recognized.

(c) In order to develop a state-wide strategy to provide academic support and guidance to each student who requires it, there is created the Georgia Mentoring Program, to be administered by the Governor's Office for Children and Families. Subject to appropriation by the General Assembly, the office shall:

(1) Develop a state-wide plan with the goal of matching every child who needs one with an academic mentor. For purposes of this Code section, the term "academic mentor" or "academic volunteer and mentor" means a volunteer who, as a participant in a local project funded under this Code section, supports the needs of the individual child with whom the volunteer is matched, including without limitation, strengthening the child's academic preparation and achievement;

(2) Develop standards for the operation of local projects for the provision of academic volunteer and mentor services;

(3) Develop criteria and procedures for funding local projects for the provision of academic volunteer and mentor services, based on local need. Such criteria shall include, but not be limited to, the following indicators: size of the school age population, school dropout rates, and student achievement;

(4) Develop and implement a state-wide public awareness and recruitment campaign for academic mentors; and

(5) Compile a state-wide resource directory of successful academic mentor programs and organizations.

(d) The Governor's Office for Children and Families shall award grants to local school systems to administer the academic volunteer and mentor service program within the local school district, subject to appropriation by the General Assembly. Funds awarded under this Code section shall be expended exclusively for the recruitment, screening, training, and placement of academic mentors in accordance with the purposes of this Code section and for evaluation of the program established by this Code section. Local school systems which receive grants shall contract with nonprofit organizations or local government agencies for program operations. In selecting the organization or agency with which to contract, the local school system shall consider the experience of the organization or agency with operating volunteer mentor projects. Each entity receiving funds under this Code section shall consult and cooperate with any teacher in whose classroom it is proposed that an academic mentor be placed. No displacement of any certified or classified school employee shall occur as a result of the use of any academic mentor pursuant to this Code section.

(e) Any local school system desiring a grant under this Code section shall submit an application to the Governor's Office for Children and Families. In addition to such other information as the office may require, each application shall include the following:

- (1) A description of activities for which assistance is requested;
- (2) A list of coapplicants, if any;
- (3) The number of children expected to be served;
- (4) A statement of the goals of the program to be supported by the grant;
- (5) A statement of the applicant's experience in the recruitment, placement, and training of volunteers and mentors;
- (6) A statement of how the applicant intends to recruit, screen, train, and place academic mentors;
- (7) A statement of how the applicant will ensure that (A) academic volunteers and mentors will be required to undergo a criminal background check and (B) no displacement of existing school employees will occur as a result of the use of academic volunteers and mentors;
- (8) A statement of the efforts the applicant will make to maximize the use of existing state, federal, and local funds from both public and private sources for the purposes of the project; and
- (9) A plan for integration of the applicant's efforts with other community based children's services.

(f) The General Assembly further finds that outstanding academic volunteer and mentor service should be encouraged and recognized. For that purpose, the Governor is authorized to provide an award to recognize outstanding academic volunteer or mentor service in the schools for each fiscal year in which funds are appropriated for the program established under this Code section. Local school systems may nominate an individual or individual program that has had a significant and positive impact upon the lives of children for the award.

(g) No later than one year following the date on which funding is provided for the purposes of this Code section, and annually thereafter in any fiscal year for which funds are appropriated for the purposes of this Code section, the Governor's Office for Children and Families shall submit to the General Assembly a report describing the progress and accomplishments of the Georgia Mentoring Program. The report shall also identify any barriers to the full achievement of the goals of the program and shall include any recommended legislative changes in that regard. (Code 1981, § 49-5-156, enacted by Ga. L. 2000, p. 1098, § 2; Ga. L. 2008, p. 568, §§ 12, 13/HB 1054.)

The 2008 amendment, effective July 1, 2008, substituted "Governor's Office for Children and Families" for "Children and Youth Coordinating Council" four times; and, in the second sentence of the introductory language of subsections (c) and (e), substituted "office" for "council" near the end.

Editor's notes. — Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: "This Act may be cited as the 'Children and Family Services Strengthening Act of 2008.'"

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: "The General Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on pre-

venting child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state's child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children's Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state's families in need."

ARTICLE 7

COMMISSION ON CHILDREN AND YOUTH

49-5-160 through 49-5-164.

Reserved. Repealed by Ga. L. 1991, p. 435, § 19, effective July 1, 1991.

Editor's notes. — This article was based on Ga. L. 1988, p. 871, § 1 and Ga. L. 1990, p. 1256, § 4.

ARTICLE 8

CENTRAL CHILD ABUSE REGISTRY

JUDICIAL DECISIONS

Constitutionality. — The portion of O.C.G.A. § 49-5-183.1 precluding a person from compelling a child's testimony in proceedings in which the person is classified as a child abuser is unconstitutional and, because it is central to the general scope of the

Act establishing the registry system, the entire Act is unconstitutional. *State v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998).

Law reviews. — For note on 1995 amendments of sections in this article, see 12 Ga. St. U.L. Rev. 360 (1995).

49-5-180. Definitions.

As used in this article, the term:

(1) "Abuse investigator" means the department, any local department of family and children services, law enforcement agency, or district attorney or designee thereof.

(2) "Abuse registry" means the Child Protective Services Information System required to be established by Code Section 49-5-181.

(3) "Abused" means subjected to child abuse.

(3.1) "Administrative law judge" means the person who conducts a hearing for the Office of State Administrative Hearings pursuant to this article.

(3.2) "Alleged child abuser" means a person deemed to be an alleged child abuser pursuant to Code Section 49-5-183.1.

(4) "Child" means any person under 18 years of age.

(5) "Child abuse" means:

(A) Physical injury or death inflicted upon a child by a parent or caretaker thereof by other than accidental means, and this shall be deemed to be physical abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; provided, however, physical forms of discipline may be used as long as there is no physical injury to the child;

(B) Neglect or exploitation of a child by a parent or caretaker thereof if said neglect or exploitation consists of a lack of supervision, abandonment, or intentional or unintentional disregard by a parent or caretaker of a child's basic needs for food, shelter, medical care, or education as evidenced by repeated incidents or a single incident which places the child at substantial risk of harm, and this shall be deemed to be child neglect for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183; and

(C) Sexual abuse of a child, and this shall be deemed to be sexual abuse for purposes of the classification required by paragraph (4) of subsection (b) of Code Section 49-5-183.

No child who in good faith is being treated solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered to be an abused child.

(6) “Confirmed” means that an investigation by an abuse investigator has revealed that there is equal or greater credible evidence that child abuse occurred than the credible evidence that child abuse did not occur.

(6.1) “DFACS office” means the principal office of a county department of family and children services.

(7) “Division” means the Division of Family and Children Services of the Department of Human Services.

(8) “Out-of-state abuse investigator” means a public child protective agency or law enforcement agency of any other state bound by confidentiality requirements as to information obtained under this article which are similar to those provided in this article.

(8.1) “Sexual abuse” means a person’s employing, using, persuading, inducing, enticing, or coercing any minor who is not that person’s spouse to engage in any act which involves:

(A) Sexual intercourse, including genital-genital, oral-genital, anal-genital, or oral-anal, whether between persons of the same or opposite sex;

(B) Bestiality;

(C) Masturbation;

(D) Lewd exhibition of the genitals or pubic area of any person;

(E) Flagellation or torture by or upon a person who is nude;

(F) Condition of being fettered, bound, or otherwise physically restrained on the part of a person who is nude;

(G) Physical contact in an act of apparent sexual stimulation or gratification with any person’s clothed or unclothed genitals, pubic area, or buttocks or with a female’s clothed or unclothed breasts;

(H) Defecation or urination for the purpose of sexual stimulation;

(I) Penetration of the vagina or rectum by any object except when done as part of a recognized medical procedure; or

(J) Sexual exploitation.

Sexual abuse shall not include consensual sex acts involving persons of the opposite sex when the sex acts are between minors or between a minor and an adult who is not more than five years older than the minor. This provision shall not be deemed or construed to repeal any law concerning the age or capacity to consent.

(9) “Sexual exploitation” means conduct by a person who allows, permits, encourages, or requires a child to engage in:

(A) Prostitution, as defined in Code Section 16-6-9; or

(B) Sexually explicit conduct for the purpose of producing any visual or print medium depicting such conduct, as defined in Code Section 16-12-100.

(10) “Unconfirmed” means that an investigation by an abuse investigator has revealed that there is some credible evidence that child abuse occurred but there is not sufficient credible evidence to classify that child abuse as confirmed.

(11) Reserved.

(12) “Unfounded” means that an investigation by an abuse investigator has determined that there is no credible evidence that child abuse occurred. (Code 1981, § 49-5-180, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 2; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraph (7).

Law reviews. — For review of 1996 social services legislation, see 13 Ga. U. L. Rev. 300 (1996).

49-5-181. Establishment of central registry.

The division shall establish and maintain a central registry which shall receive all information regarding confirmed and unconfirmed cases of child abuse reported to the division pursuant to Code Section 49-5-183.1 and which shall be known as the “Child Protective Services Information System.” (Code 1981, § 49-5-181, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

Law reviews. — For note on 1990 enactment of this Code section, see 7 Ga. St. U.L. Rev. 268 (1990).

49-5-182. Purpose of abuse registry.

The abuse registry shall be operated in such a manner as to enable abuse investigators to:

- (1) Immediately identify and locate prior reports of child abuse; and
- (2) Maintain and produce aggregate statistical data of reported cases of child abuse. (Code 1981, § 49-5-182, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

49-5-183. Reporting of abuse cases to DFACS office.

(a) An abuse investigator who completes the investigation of a child abuse report made pursuant to Code Section 19-7-5 or otherwise shall make a written report to the DFACS office of any county in which the investigation was conducted. The investigator's report shall classify the child abuse alleged to have been committed by each person in the case as "confirmed," "unconfirmed," or "unfounded."

(b) The report to the DFACS office made pursuant to subsection (a) of this Code section shall also include the following:

(1) Name, age, sex, race, social security number, if known, and birthdate of the child alleged to have been abused;

(2) Name, age, sex, race, social security number, and birthdate of the child's parents, custodian, or caretaker, if known;

(3) Name, age, sex, race, social security number, and birthdate of the person shown by some credible evidence to be the person who committed the child abuse. If there is equal or greater credible evidence that the person committed the abuse than the person did not commit the abuse, the person's name shall be listed as a "confirmed"; otherwise, the person's name shall be listed as an "unconfirmed"; and

(4) A summary of the known details of the child abuse which at a minimum shall contain the classification of the abuse as provided in paragraph (5) of Code Section 49-5-180 as either sexual abuse, physical abuse, child neglect, or a combination thereof. (Code 1981, § 49-5-183, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1991, p. 1320, § 4; Ga. L. 1995, p. 937, § 2.)

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 194 (1992).

49-5-183.1. Notice to alleged child abuser of classification; procedures; notification to division; children under 14 years of age not required to testify.

(a) If a DFACS office, pursuant to Code Section 49-5-183, receives an abuse investigator's report naming a person as having committed an act of child abuse classified as "confirmed" or "unconfirmed" in the report and such person was at least 13 years of age at the time of the commission of such act, the person so named shall be deemed to be an alleged child abuser for purposes of this article.

(b) When a DFACS office receives an investigator's report pursuant to subsection (a) of this Code section naming an alleged child abuser, that office shall mail to each alleged child abuser so classified in such report a notice regarding such classification. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the current address of the alleged child abuser and proper postage affixed. The notice of classification shall further inform such alleged child abuser of such person's right to a hearing to appeal such classification. The notice of classification shall further inform such alleged child abuser of the procedures for obtaining the hearing, and that an opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved.

(c) Any alleged child abuser who has not attained the age of majority set forth by Code Section 39-1-1 at the time of the hearing requested pursuant to subsection (e) of this Code section who is alleged to have committed an act of child abuse shall be entitled to representation at the hearing either by the alleged child abuser's parent or other legal guardian or by an attorney employed by such parent or guardian. In the event the administrative law judge conducting the hearing determines that any such alleged minor child abuser will not be so represented at the hearing, or that the interests of any such alleged minor child abuser may conflict with the interests of the alleged minor child abuser's parent or other legal guardian, the administrative law judge shall order the DFACS office which transmitted the hearing request to apply to the superior court of the county in which such DFACS office is located to have counsel appointed for the alleged minor child abuser. Payment for any such court appointed representation shall be made by the county in which such DFACS office is located.

(d) In order to exercise such right to a hearing, the alleged child abuser must file a written request for a hearing with the DFACS office which mailed the notice of classification within ten days after receipt of such notice. The written request shall contain the alleged child abuser's current residence address and, if the person has a telephone, a telephone number at which such person may be notified of the hearing.

(e) A DFACS office which receives a timely written request for a hearing under subsection (d) of this Code section shall transmit that request to the

Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provision of law, the Office of State Administrative Hearings shall conduct a hearing upon that request in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules of the Office of State Administrative Hearings adopted pursuant thereto, except as otherwise provided in this article. The hearing shall be for the purpose of an administrative determination regarding whether there was sufficient credible evidence of child abuse by the alleged child abuser to justify the investigator's classification of such abuse as "confirmed" or "unconfirmed." The Office of State Administrative Hearings shall give notice of the time and place of the hearing to the alleged child abuser by first-class mail to the address specified in the written request for a hearing and to the DFACS office by first-class mail at least ten days prior to the date of the hearing. It shall be a rebuttable presumption that any such notice is received five days after deposit in the United States mail with the correct address of the alleged child abuser and the DFACS office, respectively, and proper postage affixed. Unless postponed by mutual consent of the parties and the administrative law judge or for good cause shown, that hearing shall be held within 30 business days following receipt by the Office of State Administrative Hearings of the request for a hearing, and a decision shall be rendered within five business days following such hearing. A motion for an expedited hearing may be filed in accordance with rules and regulations promulgated by the Office of State Administrative Hearings. The hearing may be continued as necessary to allow the appointment of counsel. A telephone hearing may be conducted concerning this matter in accordance with standards prescribed in paragraph (5) of Code Section 50-13-15. Upon the request of any party to the proceeding or the assigned administrative law judge, venue may be transferred to any location within the state if all parties and the administrative law judge consent to such a change of venue. Otherwise, the hearing shall be conducted in the county of the DFACS office which transmitted the hearing request to the Office of State Administrative Hearings. The doctrines of collateral estoppel and res judicata as applied in judicial proceedings are applicable to the administrative hearings held pursuant to this article.

(f) At the conclusion of the hearing under subsection (e) of this Code section, the administrative law judge shall order that the alleged child abuser's name not be included in the abuse registry upon a finding that there is no credible evidence that such individual committed the child abuse alleged; otherwise, the administrative law judge shall order listing of the alleged child abuser's name on the abuse registry as confirmed if there is equal or greater credible evidence that such individual committed the child abuse alleged than such individual did not commit the child abuse alleged or as unconfirmed if there is some credible evidence that the alleged child abuser committed the alleged child abuse but not enough credible evidence to classify the individual as confirmed. The general public

shall be excluded from hearings of the Office of State Administrative Hearings held pursuant to this article and the files and records relating thereto shall be confidential and not subject to public inspection.

(g) Notwithstanding any other provision of law, the decision of the administrative law judge under subsection (f) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of such decision in accordance with Chapter 13 of Title 50, except that the petition for review shall be filed within ten days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be substantially the same as those for judicial review of contested cases under Code Section 50-13-19 except that the filing of a petition for judicial review stays the listing of the petitioner's name upon the abuse registry and the superior court shall conduct the review and render its decision thereon within 30 days following the filing of the petition. The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court under this subsection shall not be subject to further appeal or review.

(h) The DFACS office which notifies a person of that person's classification as an alleged child abuser and of that person's right to a hearing regarding that classification shall transmit to the division the investigator's report so naming such person unless that office receives a written request for such hearing within the time for making such request under subsection (d) of this Code section. If a timely request for hearing is received, the administrative law judge shall transmit to the division his or her decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision unless a petition for judicial review of that decision is filed within the permitted time period. If a timely petition for judicial review is filed within the permitted time period, the superior court shall transmit to the division its decision regarding the classification of the alleged child abuser and the investigator's report regarding such individual within ten days following that decision.

(i) No child under the age of 14 shall be compelled to appear to testify at any hearing held pursuant to this Code section. If a child under the age of 14 testifies voluntarily, such testimony shall be given in compliance with procedures analogous to those contained in Code Section 17-8-55. Nothing in this article shall prohibit introducing a child's statement in a hearing held pursuant to this Code section if the statement meets the criteria of Code Section 24-3-16. (Code 1981, § 49-5-183.1, enacted by Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 3; Ga. L. 1998, p. 128, § 49.)

Code Commission notes. — Pursuant to was substituted for "first class" in the fourth Code Section 28-9-5, in 1996, "first-class" sentence of subsection (c).

Law reviews. — For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 300 (1996).

JUDICIAL DECISIONS

Constitutionality. — The provision of O.C.G.A. § 49-5-183.1 precluding a person from compelling a child's testimony in proceedings in which the person is classified as a child abuser is unconstitutional on the statute's face. *State v. Jackson*, 269 Ga. 308, 496 S.E.2d 912 (1998).

49-5-184. Information to be included in abuse registry; hearing on expungement of name from registry; order; appeal.

(a) If the division receives an investigator's report, administrative law judge's decision, or superior court decision which finds credible evidence that an alleged child abuser has committed an act of child abuse which is confirmed or unconfirmed, the division shall include on the abuse registry the name and such classification of the alleged child abuser along with the investigator's report regarding such individual.

(b) All identifying information in the abuse registry of cases classified as unconfirmed shall be expunged from the abuse registry within two years after the case is so classified.

(c) Any person whose name appears in the abuse registry without a hearing having been held to determine whether or not there was sufficient credible evidence of child abuse by such person or a reasonable basis to justify such inclusion on the registry is entitled to a hearing for an administrative determination of whether or not expungement of such person's name should be ordered. In order to exercise such right, the person must file a written request for a hearing with the DFACS office of any county in which the investigation was conducted which resulted in such person's name being included in the abuse registry. The provisions of this subsection shall not apply to persons who have had a hearing pursuant to Code Section 49-5-183.1 or have waived their hearing after receipt of notice.

(d) A DFACS office which receives a written request for a hearing by a person entitled to a hearing pursuant to subsection (c) of this Code section shall transmit that request to the Office of State Administrative Hearings within ten days after such receipt. Notwithstanding any other provisions of law, the Office of State Administrative Hearings shall conduct a hearing as provided in this subsection. A hearing shall be conducted upon that request within 60 days following its receipt by the Office of State Administrative Hearings. The procedures and standards for such hearing shall be substantially the same as those for administrative hearings under Code Section 49-5-183.1. Upon a finding that there is no credible evidence that the person who requested the hearing committed the child abuse which was the basis for including such person's name on the abuse registry, the Office of

State Administrative Hearings shall order the division to expunge that name from the registry; otherwise, the Office of State Administrative Hearings shall not take any action regarding the inclusion of such person's name on the registry unless the Office of State Administrative Hearings finds credible evidence of child abuse by such person which justifies a different classification of the named person than the classification shown on the registry, in which case the Office of State Administrative Hearings shall order the appropriate classification to be shown by the division on the registry. The general public shall be excluded from such hearings and the files and records relating thereto shall be confidential and not subject to public inspection.

(e) Notwithstanding any other provision of law, the decision of the Office of State Administrative Hearings under subsection (d) of this Code section shall constitute the final administrative decision. Any party shall have the right of judicial review of that decision in accordance with Chapter 13 of Title 50, except that the petition for review shall be filed within 30 days after such decision and may only be filed with and the decision appealed to the superior court of the county where the hearing took place or, if the hearing was conducted by telephone, the Superior Court of Fulton County. The procedures for such appeal shall be the same as those for judicial review of contested cases under Code Section 50-13-19. The review and records thereof shall be closed to the public and not subject to public inspection. The decision of the superior court under this subsection shall not be subject to further appeal or review. (Code 1981, § 49-5-184, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1996, p. 1143, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "Office of State Administrative Hearings" was substituted for "State Office of Administrative Hearings" in the second sentence of subsection (d).

Law reviews. — For review of 1996 social services legislation, see 13 Ga. U.L. Rev. 300 (1996).

JUDICIAL DECISIONS

Cited in In re I.B., 219 Ga. App. 268, 464 S.E.2d 865 (1995).

49-5-185. Access to information in registry.

(a) Except as otherwise provided in subsection (c) of this Code section and subsection (b) of Code Section 49-5-186, only an abuse investigator, medical examiner, coroner, or out-of-state abuse investigator which has investigated, or is investigating, a case of possible child abuse shall be provided any information from the abuse registry and shall only be provided information relating to that case for purposes of using that information in such investigation.

(b) The department shall provide the Governor's office, the General Assembly, district attorneys, and law enforcement agencies with a statistical analysis of reported cases from the abuse registry at the end of each calendar year. This analysis shall not include the names of any children, parents, or persons alleged to have committed child abuse. This analysis shall not be protected by any laws prohibiting the dissemination of confidential information.

(c) A person may make a written request to any DFACS office to find out whether such person's name is included on the abuse registry. Upon presentation of a passport, military identification card, driver's license, or identification card authorized under Code Sections 40-5-100 through 40-5-104, the office receiving such request shall disclose to such person whether that person's name is included on the abuse registry and, if so, whether the report is classified as confirmed or unconfirmed, the date upon which the person's name was listed on the registry, and the county in which the investigation was conducted which resulted in such inclusion. (Code 1981, § 49-5-185, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

49-5-186. Confidentiality of information in registry; penalties for unauthorized use of information.

(a) Information in the abuse registry shall be confidential and access thereto is prohibited except as provided in this article. Such information shall not be deemed to be a record of child abuse for purposes of Article 2 of this chapter.

(b)(1) Information obtained from the abuse registry may not be made a part of any record which is open to the public except as provided in paragraph (2) of this subsection and except that a district attorney may use in any court proceeding that information in the course of any criminal prosecution for any offense which constitutes or results from child abuse if such information is otherwise admissible.

(2) Notwithstanding any other provisions of law, information in the abuse registry applicable to a child who at the time of his or her death was in the custody of a state department or agency or foster parent which information relates to the child while in the custody of the state department or agency or foster parent whose custody the child was in at the time of the child's death shall not be confidential and shall be subject to Article 4 of Chapter 18 of Title 50, relating to open records.

(c) Any person who knowingly provides from the abuse registry any information to a person not authorized to be provided that information under this article shall be guilty of a misdemeanor.

(d) Any person who knowingly and under false pretense obtains or attempts to obtain information which was obtained from the abuse registry

except as authorized in this article shall be guilty of a misdemeanor. (Code 1981, § 49-5-186, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2; Ga. L. 1998, p. 609, § 6.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “this chapter” was substituted for “Chapter 5 of Title 49” in subsection (a).

Pursuant to Code Section 28-9-5, in 1995, a comma was deleted following “this article” in subsection (c).

49-5-187. Immunity from civil or criminal liability.

The department, each DFACS office, and employees thereof providing information from the abuse registry as authorized by this article and any person who uses such information from the abuse registry as authorized by this article shall have no civil or criminal liability therefor. (Code 1981, § 49-5-187, enacted by Ga. L. 1990, p. 1772, § 1; Ga. L. 1995, p. 937, § 2.)

ARTICLE 9

FAMILY PRESERVATION AND CHILD PROTECTION

49-5-200 through 49-5-209.

Repealed by Ga. L. 1990, p. 1986, § 2, effective January 1, 1993.

Editor’s notes. — This article was based on Ga. L. 1990, p. 1986, § 1; Ga. L. 1991, p. 435, §§ 14-16; and Ga. L. 1992, p. 6, § 49.

ARTICLE 10

CHILDREN AND ADOLESCENTS WITH SEVERE EMOTIONAL PROBLEMS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, this article was renumbered as Article 10, and its sections renumbered as Code Sections 49-5-220 to 49-5-227, as another Article 8 was enacted in 1990.

49-5-220. Legislative findings and intent; State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(a) The General Assembly declares its intention and desire to:

(1) Ensure a comprehensive mental health program consisting of early identification, prevention, and early intervention for every child in Georgia;

(2) Preserve the sanctity of the family unit;

(3) Prevent the unnecessary removal of children and adolescents with a severe emotional disturbance from their homes;

(4) Prevent the unnecessary placement of these children out of state;

(5) Bring those children home who through use of public funds are inappropriately placed out of state; and

(6) Develop a coordinated system of care so that children and adolescents with a severe emotional disturbance and their families will receive appropriate educational, nonresidential and residential mental health services, and support services, as prescribed in an individualized plan.

(b) In recognition of the fact that services to these children are provided by several different agencies, each having a different philosophy, a different mandate, and a different source of funding, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities shall have the primary responsibility for planning, developing, and implementing the coordinated system of care for severely emotionally disturbed children. Further, it recognizes that to enable severely emotionally disturbed children to develop appropriate behaviors and demonstrate academic and vocational skills, it is necessary that the Department of Education provide appropriate education in accordance with P.L. 94-142 and that the Department of Behavioral Health and Developmental Disabilities provide mental health treatment.

(c) Further, in recognition that only a portion of the children needing services are receiving them and in recognition that not all the services that comprise a coordinated system of care are currently in existence or do not exist in adequate numbers, the General Assembly intends that the Department of Behavioral Health and Developmental Disabilities and the Department of Education jointly develop and implement a State Plan for the Coordinated System of Care for severely or emotionally disturbed children or adolescents as defined in paragraph (10) of Code Section 49-5-221.

(d) The commissioner of behavioral health and developmental disabilities and the State School Superintendent shall be responsible for the development and implementation of the state plan.

(e) The commissioner of behavioral health and developmental disabilities shall be responsible for preparing this jointly developed state plan for publication and dissemination. The commissioner of behavioral health and developmental disabilities shall also be responsible for preparing for publication and dissemination the annual report.

(f) The receipt of services under this article is not intended to be conditioned upon placement of a child in the legal custody, protective supervision, or protection of the Department of Human Services. (Code 1981, § 49-5-220, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2002, p. 1324, § 1-23; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 3-26/HB 228.)

The 2009 amendments. — The first 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, substituted “The commissioner of human resources” for “The commissioner of the Department of Human Resources” in subsection (d) and twice in subsection (e). The second 2009 amendment, effective July 1, 2009, in subsection (b), substituted “the Department of Behavioral Health and Developmental Disabilities” for “the Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources” in both sentences; in subsection (c), substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” near the middle; in subsections (d)

and (e), substituted “commissioner of behavioral health and developmental disabilities” for “commissioner of the Department of Human Resources”; and, in subsection (f), substituted “Department of Human Services” for “Department of Human Resources” at the end.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “49-5-221” was substituted for “49-5-181” in subsection (c) to correspond to the renumbering of this article.

The amendment of this Code section by Ga. L. 2009, p. 8, § 49, irreconcilably conflicted with and was treated as superseded by Ga. L. 2009, p. 453, § 3-2. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

49-5-221. Definitions.

As used in this article, the term:

(1) “Annual report” means the report prepared by the commissioner of the Department of Behavioral Health and Developmental Disabilities for publication and dissemination that includes: the jointly developed State Plan for the Coordinated System of Care; and data on state services to severely emotionally disturbed children or adolescents that are provided either directly by the Department of Behavioral Health and Developmental Disabilities, the Department of Education, or other involved state agencies, or indirectly through state funding to private agencies.

(2) “Case management” means assuring continuity of services for the child and family, coordinating of services for the child and family, coordinating the interagency assessment of the child and family’s needs, arranging for needed services, and linking various services and agencies.

(3) “Case manager” means the individual identified and assigned the responsibility of ensuring that the child and family obtain necessary services. The case manager shall ensure that evaluations and service provision from multiple agencies are coordinated; that services are based on integrated assessments and evaluations; that adequacy and appropriateness of services is reviewed through quarterly case review staffings; that prompt service delivery is facilitated; that clients are tracked; and that family involvement and input is maintained.

(4) “Coordinated system of care” means a comprehensive array of mental health and other necessary services organized into a coordinated network to meet the multiple and changing needs of severely emotionally disturbed children and adolescents.

(5) “Five-year plan” or “state plan” means the State Plan for the Coordinated System of Care for severely emotionally disturbed children or adolescents.

(6) “Individualized plan” means a written plan for a child or adolescent with a severe emotional disturbance, when appropriate and when eligible, that is based upon the comprehensive multidisciplinary assessment of the individual needs of the child. Such plans shall include, but not be limited to: individualized treatment plans; individualized education plans; individualized placement plans; individualized case plans; individualized family service plans; and individualized employment, service, and rehabilitation plans.

(7) “Local interagency children’s committees” means committees with multiagency representation that are established at the local level to staff cases and review decisions about appropriate treatment or placement of children or adolescents experiencing severe emotional disturbance. Existing troubled children’s committees may serve as local interagency committees.

(8) “Regional plan” means a written strategy developed by local interagency children’s committees based on the principles delineated in Code Section 49-5-222. It contains the same components as the state plan.

(9) “Reintegration plan” means an individualized plan that is designed to provide for the return of the severely emotionally disturbed child or adolescent, who has been placed out of home or out of state to his family or community.

(10) “Severely emotionally disturbed child or adolescent” or “child or adolescent with a severe emotional disturbance” means a person defined as such by the Department of Behavioral Health and Developmental Disabilities for mental health services or by the Department of Education for educational purposes. (Code 1981, § 49-5-221, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 2009, p. 453, § 3-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” twice in paragraph (1), and once in paragraph (10).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “49-5-222” was substituted for “49-5-182” in paragraph (8) to correspond to the renumbering of this article.

49-5-222. Guiding principles for coordinated system of care.

The following ideals shall be the guiding principles for the coordinated system of care:

(1) Services shall be child and family centered and give priority to keeping children with their families. Families shall be fully involved in all

aspects of planning and delivery of services; however, no family shall be required to accept services for any family member;

(2) Services shall be community based, with decision-making responsibility and management at the community level;

(3) Services shall be comprehensive, addressing the child's physical, educational, social, and emotional needs;

(4) Agency resources and services shall be shared and coordinated with written interagency agreements detailing linkages;

(5) Services shall be provided in the least restrictive setting consistent with effective services and as close to the child's home as appropriate;

(6) Services shall address the unique needs and potential of each child and shall be sufficiently flexible to meet the individual needs of the child and family;

(7) Services shall promote early identification and intervention;

(8) Services shall be culturally and ethnically sensitive;

(9) All legal rights of these children shall be protected; and

(10) The parent or guardian shall be involved in the development of the individualized plan and the delivery of services as defined by the individualized plan. (Code 1981, § 49-5-222, enacted by Ga. L. 1990, p. 1798, § 1.)

49-5-223. Contents of plan; information to be collected; updating of plan; implementation date.

(a) The State Plan for the Coordinated System of Care shall be based upon the projected need for services for a five-year period. The plan shall:

(1) Be based upon the principles delineated in Code Section 49-5-222;

(2) Be based on a case management system with assigned case managers;

(3) Consider nonresidential services including case management, prevention, early identification, assessment, outpatient treatment, home based services, day treatment, and emergency services;

(4) Consider residential services including therapeutic foster care, therapeutic group care, independent living services, residential treatment care, and inpatient hospitalization;

(5) Include mechanisms for handling conflict resolution among the various responsible agencies;

(6) Provide a mechanism to coordinate local resources with all involved state agencies;

(7) Develop specific guidelines for the development and submission of regional interagency plans based on the principles in Code Section 49-5-222;

(8) Provide for the coordination of budget, where possible; for the publication of joint costs of the comprehensive plan; and for a statement on budget recommendations;

(9) Identify gaps in service;

(10) Identify needed policy revisions; and

(11) Recommend priorities for the continuation or development of programs and resources.

(b) In developing the plan, the Department of Behavioral Health and Developmental Disabilities and the Department of Education shall collect information on the population currently being served and the population projected to be served.

(c) The plan shall be updated annually.

(d) The first plan shall be put into implementation by July 1, 1991. (Code 1981, § 49-5-223, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1994, p. 97, § 49; Ga. L. 2009, p. 453, § 3-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” in subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “49-5-222” was substituted for “49-5-182” in paragraphs (a)(1) and (a)(7) to correspond to the renumbering of this article.

49-5-224. Commissioner of behavioral health and developmental disabilities to submit annual report; contents of report.

The commissioner of behavioral health and developmental disabilities shall submit an annual report to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, and the Governor’s Office for Children and Families. The report shall contain a copy of the updated State Plan for the Coordinated System of Care. The report shall also contain the following information on severely and emotionally disturbed children and adolescents receiving services directly or indirectly through the Department of Behavioral Health and Developmental Disabilities, the Department of Education, or any other state agency:

(1) The number and ages of children in out-of-state residential facilities;

(2) The number and ages of children in in-state residential facilities;

(3) The number and ages of children in nonresidential treatment;

(4) Annual public funds expended for out-of-state placements, the sources of such funds, and the average cost per child of such out-of-state placement;

(5) Annual public funds expended for in-state residential placements, the sources of such funds, and their average cost per child of such in-state residential placement;

(6) Annual public funds expended for nonresidential treatment, the sources of such funds, and the average cost per child of such nonresidential treatment;

(7) The average length of stay in out-of-state and in-state placements; and

(8) The number and ages of children placed in out-of-home treatment compared to the total number of children in each county of the state. (Code 1981, § 49-5-224, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1991, p. 435, § 17; Ga. L. 2005, p. 48, § 6/HB 309; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2009, p. 303, §§ 9, 14/HB 117; Ga. L. 2009, p. 453, §§ 3-2, 3-3/HB 228.)

The 2008 amendment, effective July 1, 2008, substituted “Governor’s Office for Children and Families” for “Children and Youth Coordinating Council” in the first sentence of the introductory language.

The 2009 amendments. — The first 2009 amendment, effective April 30, 2009, substituted “House Education Committee, the Senate Education and Youth Committee” for “House and Senate Education Committees” and substituted “Senate Health and Human Services Committee” for “Senate Committee on Health and Human Services” in the first sentence of the introductory paragraph. See the Editor’s note for intent. The second 2009 amendment, effective July 1, 2009, in the introductory language, substituted “commissioner of behavioral health and developmental disabilities” for “commissioner of human resources” in the first sentence, and “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” in the second sentence.

Editor’s notes. — Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: “This Act may be cited as the ‘Children and Family Services Strengthening Act of 2008.’”

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: “The Gen-

eral Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state’s child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state’s families in need.”

Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

Law reviews. — For note on 1991 amend-

ment of this Code section, see 8 Ga. St. U.L. Rev. 21 (1992).

49-5-225. Local interagency committees; membership; function of committees.

(a) At least one local interagency committee shall be established for each region of the Department of Behavioral Health and Developmental Disabilities whose permanent membership shall include a local representative from each of the following:

- (1) The community mental health agency responsible for coordinating children's services;
- (2) The Division of Family and Children Services of the Department of Human Services;
- (3) The Department of Juvenile Justice;
- (4) The Division of Public Health of the Department of Community Health;
- (5) A member of the special education staff of the local education agency; and
- (6) The Division of Rehabilitation Services of the Department of Labor.

(b) In addition to the permanent members, the local interagency committee reviewing the case of a child or adolescent may include as ad hoc members the special education administrator of the school district serving the child or adolescent, the parents of the child or adolescent, and caseworkers from any involved agencies.

(c) The local interagency committees shall:

(1) Staff cases and review and modify as needed decisions about placement of children and adolescents in out-of-home treatment or placement, monitor each child's progress, facilitate prompt return to the child's home when possible, develop a reintegration plan shortly after a child's admission to a treatment program, review the individual plan for the child or adolescent and amend the plan if necessary, and ensure that services are provided in the least restrictive setting consistent with effective services; and

(2) Be the focal point for the regional plan, if any. (Code 1981, § 49-5-225, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 1453, § 1; Ga. L. 2000, p. 1137, § 5; Ga. L. 2002, p. 1324, § 1-24; Ga. L. 2009, p. 453, § 3-27/HB 228.)

The 2009 amendment, effective July 1, 2009, in subsection (a), in the introductory language, substituted "Department of Behavioral Health and Developmental Disabilities" for "Department of Behavioral Health and Developmental Disabilities".

ities” for “Division of Mental Health, Developmental Disabilities, and Addictive Diseases of the Department of Human Resources”, in paragraph (a)(2), substituted “Department of Human Services” for “Department of Human Resources”, and in

paragraph (a)(4), substituted “Department of Community Health” for “Department of Human Resources”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “and” was added to the end of paragraph (a)(5).

49-5-226. Placement of children and adolescents out of state for treatment.

(a) Effective July 1, 1993, no children or adolescents with a serious emotional disturbance shall be placed out of state for treatment except after all community resources have been exhausted, all administrative procedures and remedies have been exhausted, or the court has ordered placement or services other than in Georgia.

(b) The cases of all children and adolescents currently placed out of state for treatment of serious emotional problems shall be reviewed to determine the appropriateness of their placement, their readiness to return to their home community, and needed services. All children currently in out-of-state placement shall be brought home no later than July 1, 1995, but only after each child has been given an individual reintegration plan specifying in detail the services, both in terms of human services and in fiscal resources, that shall be available and provided for that child and family. The services for each such child shall be provided from the funds appropriated, including funds now used for out-of-state placement of such child, and all such services shall be provided in the least restrictive environment.

(c) Fiscal incentives, such as flexible funding or decentralized funding, shall be developed for keeping children with their families and developing community based services.

(d) Nothing in this article shall prohibit or prevent a nonprofit agency from contracting with the state to provide any part of the continuum of services, provided that such services shall be provided in the least restrictive environment. (Code 1981, § 49-5-226, enacted by Ga. L. 1990, p. 1798, § 1.)

49-5-227. Governor’s Office for Children and Families to comment on plan for Coordinated System of Care and provide recommendations.

The Governor’s Office for Children and Families shall:

(1) Annually review and comment on the State Plan for the Coordinated System of Care, and submit its comments to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, the Department of Behavioral Health and Developmental Disabilities, and the Department of Education; and

(2) Annually identify and recommend fiscal, policy, and program initiatives and revisions in the state coordinated system of care to the House and Senate Appropriations Committees, the House Education Committee, the Senate Education and Youth Committee, the House Health and Human Services Committee, the Senate Health and Human Services Committee, the Governor, the Department of Behavioral Health and Developmental Disabilities, and the Department of Education. (Code 1981, § 49-5-227, enacted by Ga. L. 1990, p. 1798, § 1; Ga. L. 1991, p. 435, § 18; Ga. L. 2005, p. 48, § 7/HB 309; Ga. L. 2008, p. 568, § 12/HB 1054; Ga. L. 2009, p. 303, §§ 9, 14/HB 117; Ga. L. 2009, p. 453, § 3-2/HB 228.)

The 2008 amendment, effective July 1, 2008, substituted “Governor’s Office for Children and Families” for “Children and Youth Coordinating Council” in the introductory language.

The 2009 amendments. — The first 2009 amendment, effective April 30, 2009, substituted “House Education Committee, the Senate Education and Youth Committee” for “House and Senate Education Committees” and substituted “Senate Health and Human Services Committee” for “Senate Committee on Health and Human Services” in paragraphs (1) and (2). See the Editor’s note for intent. The second 2009 amendment, effective July 1, 2009, substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” in paragraphs (1) and (2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted at the beginning of the present undesignated introductory language.

Editor’s notes. — Ga. L. 2008, p. 568, § 1, not codified by the General Assembly, provides: “This Act may be cited as the ‘Children and Family Services Strengthening Act of 2008.’”

Ga. L. 2008, p. 568, § 2, not codified by the General Assembly, provides: “The Gen-

eral Assembly finds that well-intentioned efforts over the years have resulted in the creation of several agencies focused on preventing child abuse and juvenile delinquency, on serving at-risk families and troubled youth, and on promoting the improvement of our state’s child welfare system. The General Assembly further finds that the work of some of these agencies overlaps, and that the at-risk families and troubled children of Georgia will be more efficiently and effectively served by consolidating the Children and Youth Coordinating Council with the Children’s Trust Fund Commission, by placing the functions of the Georgia Child Fatality Review Panel under the supervision of the Child Advocate for the Protection of Children, and by encouraging these consolidated agencies to collaborate to create a consistent vision for serving the needs of our state’s families in need.”

Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

Law reviews. — For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 21 (1992).

ARTICLE 11

CHILD CARE COUNCIL

49-5-240 through 49-5-244.

Reserved. Redesignated by Ga. L. 2004, p. 645, § 15, effective October 1, 2004.

Editor's notes. — Ga. L. 2004, p. 645, through 49-5-244 as present Code Sections § 15, effective October 1, 2004, redesignated former Code Sections 49-5-240 through 49-5-244 as present Code Sections 20-1A-60 through 20-1A-64, respectively.

ARTICLE 12

POLICY COUNCIL FOR CHILDREN AND FAMILIES

49-5-250 through 49-5-264.

Reserved. Repealed by Ga. L. 2001, p. 4, § 49, effective February 12, 2001.

Editor's notes. — This article, consisting of Code Sections 49-5-250 through 49-5-264, concerning the policy council for children and families, was based on Ga. L. 1995, p. 316, § 1; Ga. L. 1997, p. 1453, § 2; Ga. L. 1999, p. 296, § 24.

ARTICLE 13

PEACHCARE FOR KIDS

Law reviews. — For review of 1998 legislation relating to health, see 15 Ga. St. U.L. Rev. 122 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, § 33 et seq.

C.J.S. — 81 C.J.S., Social Security, § 231 et seq.

49-5-270. Short title.

This article shall be known and may be cited as the “PeachCare for Kids Act.” (Code 1981, § 49-5-270, enacted by Ga. L. 1998, p. 623, § 1.)

49-5-271. Legislative findings.

The General Assembly finds and declares that a large proportion of school-aged children in Georgia do not currently have access to adequate medical treatment and, further, that this lack of access can hinder a child's ability to reach his or her full physical and educational potential. The General Assembly further finds that federal funding made available to the states under Title XXI of the federal Social Security Act may be used to administer programs to provide such coverage. The General Assembly further finds the provision of adequate medical coverage for this population to be in the public interest and further declares the establishment of the program pursuant to this article to be a desirable and economical means of increasing access to such medical coverage. (Code 1981, § 49-5-271, enacted by Ga. L. 1998, p. 623, § 1.)

49-5-272. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Community Health.
- (2) "Department" means the Department of Community Health.
- (3) "Federal law" means Title XXI of the federal Social Security Act.
- (4) "Medicaid" means medical assistance provided under Article 7 of Chapter 4 of this title, the "Georgia Medical Assistance Act of 1977."
- (5) "PeachCare" or "program" means the PeachCare for Kids Program created by Code Section 49-5-273. (Code 1981, § 49-5-272, enacted by Ga. L. 1998, p. 623, § 1; Ga. L. 1999, p. 296, § 24; Ga. L. 2005, p. 1438, § 4/SB 140.)

49-5-273. (For effective date, see note.) Creation of PeachCare; availability; eligibility; payment of premiums; enrollment; authorization to obtain income eligibility verification from the Department of Revenue.

(a) There is created the PeachCare for Kids Program to provide health care benefits for children in families with income below 235 percent of the federal poverty level. Children from birth through 18 years of age in families with family incomes below 235 percent of the federal poverty level and who are not eligible for medical assistance under Medicaid shall be eligible for the program, to be administered by the department pursuant to federal law and subject to availability of funding.

(b) No entitlement to benefits for the children covered under the program or this article shall be created by the program, nor shall this article or any rules or regulations adopted pursuant to this article be interpreted to entitle any person to receive any health services or insurance available under this program. The program shall be established subject to the availability of funds specifically appropriated by the General Assembly for this purpose and federal matching funds as set forth in federal law. The department shall operate the program consistent with administrative efficiency and the best interests of children.

(c) The program shall offer substantially the same health care services available to children under Georgia's Medicaid plan, but coverage for such services shall not be provided by an expansion of eligibility for medical assistance under Medicaid. However, the program shall exclude nonemergency transportation and targeted case management services. The department shall utilize appropriate medical management and utilization control procedures necessary to manage care effectively and shall prospectively limit enrollment in the program and modify the health care services

benefits when the department has reason to believe the cost of such enrollment or services may exceed the availability of funding.

(d) The department may require copayments for services consistent with federal law; provided, however, that no copayment shall be charged for preventive services and no copayments or premiums shall be charged for any child under six years of age. Preventive services include but are not limited to medically necessary maintenance medication and monitoring for chronic conditions such as asthma and diabetes.

(e) The department shall require payment of premiums for participation in the program. The premiums shall not exceed the amounts permitted under Section 1916(b)(1) of the Social Security Act or federal law.

(f) The department may provide for presumptive eligibility for all applicant children as allowed by federal law and in a manner consistent with the provisions of this article.

(g) The department shall provide for outreach for the purpose of enrolling children in the program. Applications shall be accepted by mail or in person. All necessary and appropriate steps shall be taken to achieve administrative cost efficiency, reduce administrative barriers to application for and receipt of services under the program, verify eligibility for the program and enforce eligibility standards, and ensure that enrollment in the program does not substitute for coverage under a group health insurance plan.

(h) Any health care provider who is enrolled in the Medicaid program shall be deemed to be enrolled in the program.

(i) The department shall file a Title XXI plan to carry out the program with the United States Department of Health and Human Services Centers for Medicare and Medicaid Services. The department shall have the authority and flexibility to make such decisions as are necessary to secure approval of that plan consistent with this article. The department shall provide a copy of the plan to the General Assembly. The department shall operate this program consistent with federal law.

(j) The department shall publish an annual report, a copy of which shall be provided to the Governor, setting forth the number of participants in the program, the health services provided, the amount of money paid to providers, and other pertinent information with respect to the administration of the program. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient.

(k) All state agencies shall cooperate with the department and its designated agents by providing requested information to assist in the administration of the program.

(l) The department, through the Department of Administrative Services or any other appropriate entity, may contract for any or all of the following: the collection of premiums, processing of applications, verification of eligibility, outreach, data services, and evaluation, if such contracting achieves administrative or service cost efficiency. The department, and other state agencies as appropriate, shall provide necessary information to any entity which has contracted with the department for services related to the administration of the program upon request. For purposes of compliance with Code Section 34-8-125, a request by any entity which has contracted with the department for services related to the administration of the program shall be deemed to be a request by a responsible official of the department and considered to be a request by the department.

(m) Nothing in this article shall be interpreted in a manner so as to preclude the department from contracting with licensed health maintenance organizations (HMO) or provider sponsored health care corporations (PSHCC) for coverage of program services and eligible children; provided, however, that such contracts shall require payment of premiums and copayments in a manner consistent with this article. The department may require enrollment in a health maintenance organization (HMO) or provider sponsored health care corporation (PSHCC) as a condition of receiving coverage under the program.

(n) The Department of Education and local boards of education shall cooperate with and provide assistance to the department and its designated agents for the purposes of identifying and enrolling eligible children in the program.

(o) (For effective date, see note.) As necessary to enforce the provisions of this article, the department or its duly authorized agents may submit to the state revenue commissioner the names of applicants for health care benefits or payments provided under this article, as well as the relevant income threshold specified therein. If the department elects to contract with the state revenue commissioner for such purposes, the state revenue commissioner and his or her agents or employees shall notify the department whether or not each submitted applicant's income exceeds the relevant income threshold provided. The department shall pay the state revenue commissioner for all costs incurred by the Department of Revenue pursuant to this subsection. No information shall be provided by the Department of Revenue to the department without an executed cooperative agreement between the two departments. Any tax information secured from the federal government by the Department of Revenue pursuant to express provisions of Section 6103 of the Internal Revenue Code may not be disclosed by the Department of Revenue pursuant to this subsection. Any person receiving any tax information under the authority of this subsection is subject to the provisions of Code Section 48-7-60 and to all penalties provided under Code Section 48-7-61 for unlawful divulging of confidential

tax information. (Code 1981, § 49-5-273, enacted by Ga. L. 1998, p. 623, § 1; Ga. L. 2000, p. 472, §§ 1, 2; Ga. L. 2002, p. 415, § 49; Ga. L. 2005, p. 1036, § 41/SB 49; Ga. L. 2005, p. 1438, § 5/SB 140; Ga. L. 2009, p. 63, § 2/SB 165.)

Delayed effective date. — Subsection (o), as set out above, becomes effective January 1, 2010. Until January 1, 2010, there is no subsection (c).

The 2009 amendment, effective January 1, 2010, added subsection (o).

U.S. Code. — Section 6103 of the Internal Revenue Code, referred to in subsection (o) of this section, is codified as 26 U.S.C. § 6103.

ARTICLE 14

FOSTER PARENTS BILL OF RIGHTS

Cross references. — Tax credit for adoption of foster child, § 48-7-29.15

49-5-280. Short title.

This article shall be known and may be cited as the “Foster Parents Bill of Rights.” (Code 1981, § 49-5-280, enacted by Ga. L. 2004, p. 157, § 1.)

RESEARCH REFERENCES

ALR. — Standing of foster parent to seek termination of rights of foster child’s natural parents, 21 ALR4th 535.

49-5-281. Bill of rights for foster parents; filing of grievance in event of violations.

(a) The General Assembly finds that foster parents providing care for children who are in the custody of the Department of Human Services play an integral, indispensable, and vital role in the state’s effort to care for dependent children displaced from their homes. The General Assembly further finds that it is in the best interest of Georgia’s child welfare system to acknowledge foster parents as active and participating members of this system and to support them through the following bill of rights for foster parents who care for children in the custody of the Department of Human Services through direct approval and placement by the department:

(1) The right to be treated by the Division of Family and Children Services of the Department of Human Services and other partners in the care of abused children with dignity, respect, and trust as a primary provider of foster care and a member of the professional team caring for foster children;

(2) The right not to be discriminated against on the basis of religion, race, color, creed, gender, marital status, national origin, age, or physical handicap;

(3) The right to continue with his or her own family values and beliefs, so long as the values and beliefs of the foster child and the birth family are not infringed upon and consideration is given to the special needs of children who have experienced trauma and separation from their families. This shall include the right to exercise parental authority within the limits of policies, procedures, and other directions of the Division of Family and Children Services and within the limits of the laws of the State of Georgia;

(4) The right to receive both standardized pre-service training, including training in Division of Family and Children Services policies and procedures and appropriate ongoing training, by the Division of Family and Children Services or the placing agency at appropriate intervals to meet mutually assessed needs of the child and to improve foster parents' skills and to apprise foster parents of any changes in policies and procedures of the Division of Family and Children Services and any changes in applicable law;

(5) The right to be apprised of information, laws, and guidelines on the obligations, responsibilities, and opportunities of foster parenting and to be kept informed of any changes in laws, policies, and procedures regarding foster parenting by the Division of Family and Children Services in a timely manner and at least annually;

(6) The right to receive timely financial reimbursement according to the agreement between the foster parents and the Department of Human Services from funds appropriated by the General Assembly and to be notified of any costs or expenses for which the foster parent may be eligible for reimbursement;

(7) The right to receive information from the Division of Family and Children Services on how to receive services and reach personnel 24 hours per day, seven days per week;

(8) The right prior to the placement of a child to be notified of any issues relative to the child that may jeopardize the health and safety of the foster family or the child or alter the manner in which foster care should be administered;

(9) The right to discuss information regarding the child prior to placement. The Division of Family and Children Services will provide such information as it becomes available as allowable under state and federal laws;

(10) The right to refuse placement of a child in the foster home or to request, upon reasonable notice, the removal of a child from the foster

home without fear of reprisal or any adverse effect on being assigned any future foster or adoptive placements;

(11) The right to receive any information through the Division of Family and Children Services regarding the number of times a foster child has been moved and the reasons therefor; and to receive the names and phone numbers of the previous foster parents if the previous foster parents have authorized such release and as allowable under state and federal law;

(12) The right, at any time during which a child is placed with the foster parent, to receive from the Division of Family and Children Services any and all additional pertinent information relevant to the care of the child;

(13) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster parent's home and to discuss such plan with the case manager, as well as reasonable notification of any changes to that plan;

(14) The right to participate in the planning of visitation with the child and the child's biological family with the foster parents recognizing that visitation with his or her biological family is important to the child;

(15) The right to participate in the case planning and decision-making process with the Division of Family and Children Services regarding the child as provided in Code Section 15-11-58;

(16) The right to provide input concerning the plan of services for the child and to have that input considered by the department;

(17) The right to communicate for the purpose of participating in the case of the foster child with other professionals who work with such child within the context of the professional team, including, but not limited to, therapists, physicians, and teachers, as allowable under state and federal law;

(18) The right to be notified in advance, in writing, by the Division of Family and Children Services or the court of any hearing or review where the case plan or permanency of the child is an issue, including periodic reviews held by the court or by the Judicial Citizen Review Panel, hearings following revocation of the license of an agency which has permanent custody of a child, permanency hearings, and motions to extend custody, in accordance with Code Section 15-11-58;

(19) The right to be considered, where appropriate, as a preferential placement option when a child who was formerly placed with the foster parents has reentered the foster care system;

(20) The right to be considered, where appropriate, as the first choice as a permanent parent or parents for a child who, after 12 months of

placement in the foster home, is released for adoption or permanent foster care;

(21) The right to be provided a fair and timely investigation of complaints concerning the operation of a foster home;

(22) The right to an explanation of a corrective action plan or policy violation relating to foster parents; and

(23) The right, to the extent allowed under state and federal law, to have an advocate present at all portions of investigations of abuse and neglect at which an accused foster parent is present. Child abuse and neglect investigations shall be investigated pursuant to Division of Family and Children Services policies and procedures, and any removal of a foster child shall be conducted pursuant to those policies and procedures. The Division of Family and Children Services will permit volunteers with the Adoptive and Foster Parent Association of Georgia to be educated concerning the procedures relevant to investigations of alleged abuse and neglect and the rights of accused foster parents. After such training, a volunteer will be permitted to serve as an advocate for an accused foster parent. All communication received by the advocate in this capacity shall be strictly confidential.

(b) This bill of rights shall be given full consideration when Division of Family and Children Services policies regarding foster care and adoptive placement are developed.

(c) Foster parents who care for children in the custody of the Department of Human Services through direct approval and placement by the department shall have the right to file a grievance in response to any violation of this article, which shall be such foster parents' exclusive administrative remedy for any violation of this article. The Division of Family and Children Services and the Office of the Child Advocate for the Protection of Children, along with an advisory committee comprised in part of representatives from the Adoptive and Foster Parent Association of Georgia, who provide private placements will develop a grievance procedure, including a mediation procedure, to be published in departmental policy manuals and the Foster Parent Handbook no later than July 1, 2005.

(d) The General Assembly further finds that it is also in the best interest of Georgia's child welfare system for the Division of Family and Children Services of the Department of Human Services to recognize the bill of rights, with reasonable modifications made to adapt the provisions as required to make them applicable to private agencies, by incorporating them into contracts with private agencies serving children in the custody of the Department of Human Services. The Department of Human Services shall, by contract, require that providers, with whom it contracts for the placement of children in its custody, give full consideration to the rights in subsection (a) of this Code section in developing their policies, practices,

and procedures regarding foster care and adoptive placement. The department shall provide information needed by the contractors to meet the requirements of this subsection in a timely manner.

(e) The Department of Human Services, in consultation with the representatives of Georgia Association of Homes and Services for Children and other appropriate provider associations and the Adoptive and Foster Parent Association of Georgia, shall develop a grievance procedure for dealing with any grievances their foster parents have in response to any violation of this article, no later than July 1, 2007. The department shall enforce this provision through policies and procedures and through its contracts with providers. (Code 1981, § 49-5-281, enacted by Ga. L. 2004, p. 157, § 1; Ga. L. 2007, p. 646, § 1/SB 188; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2007 amendment, effective July 1, 2007, in the introductory paragraph of subsection (a), deleted “who are volunteers” following “foster parents” near the beginning and inserted “for foster parents who care for children in the custody of the Department of Human Resources through direct approval and placement by the department” at the end; in the first sentence of subsection (c), inserted “who care for children in the custody of the Department of Human Resources through direct approval and placement by the department” and inserted “administrative”; and added subsections (d) and (e).

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” throughout this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “no later than July 1, 2005” was substituted for “within one year of the effective date of the article” at the end of subsection (c).

Pursuant to Code Section 28-9-5, in 2007, “effect” was substituted for “affect” in paragraph (a)(10).

JUDICIAL DECISIONS

Protection of children. — Innocent foster children are entitled to greater protection than imprisoned criminals; thus, the professional judgment standard applies when determining issues of summary judgment. *Kenny A. v. Perdue*, F. Supp. 2d , 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

Duty of state. — Once state officials have removed a child from his or her home, the

officials have a constitutional duty to protect the child from harm. This duty includes an obligation to fund and implement safe and appropriate placements and services that do not substantially depart from accepted standards of professional judgment and do not unnecessarily interfere with the child’s rights of familial association. *Kenny A. v. Perdue*, F. Supp. 2d , 2004 U.S. Dist. LEXIS 27025 (N.D. Ga. Dec. 11, 2004).

CHAPTER 6**SERVICES FOR THE AGING****Article 1****General Provisions**

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49-6-74.

Provision of services; reimbursement of caregivers; maximum amounts available.

49-6-75.

Entitlements not created.

49-6-76.

Displacement of other programs prohibited.

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Article 7**Licensure of Adult Day Center**

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Short title.

49-6-81.

Legislative intent.

49-6-82.

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49-6-83.

License required; nontransferable.

49-6-84.

Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.

49-6-85.

Periodic inspection by department; exemptions.

49-6-86.

(For effective date, see note.) Reasonable fees for licensure of adult day centers; use of fees.

Cross references. — Rights of persons residing in long-term care facilities generally, § 31-8-100 et seq. Powers and duties of Department of Human Services and county departments of family and children services regarding public assistance to the aged, § 49-4-30 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 70A Am. Jur. 2d, Social Security and Medicare, §§ 1 et seq., 635 et seq. **C.J.S.** — 81 C.J.S., Social Security, § 71 et seq.

ARTICLE 1

GENERAL PROVISIONS

49-6-1. Purpose of article.

(a) The constantly increasing proportion of older people within the population of this state and the increasing gravity of the human distress and the loss accruing to the entire society as a result of the limitations and disadvantages confronting older people in maintaining their economic self-sufficiency and personal well-being and realizing their maximum potential as contributors to their community, state, and nation are matters of profound import and concern for all the people of this state.

(b) It is, therefore, necessary and of the utmost importance to encourage the development and maintenance within this state of a comprehensive and coordinated network of public and private facilities for the alleviation or correction of these limitations and disadvantages and to encourage the conducting of continuous study and research into the needs and problems of older people under present and future economic and social conditions because it is essential for the prevention of dependency and the conservation of human values and a necessity in safeguarding and fostering the general welfare.

(c) It is, therefore, declared to be the intent of the General Assembly by the passage of this article to provide for encouragement of the development, maintenance, and coordination of the aforementioned facilities. (Ga. L. 1962, p. 604, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the subsection (a), (b), and (c) designations were added in this Code section.

49-6-2. Department designated agency for federal programs for aging; development and coordination of state, local, and interstate programs.

(a) The department shall constitute the designated state agency to handle all programs of the federal government relating to the aging and requiring acts within the state which are not the specific responsibility of

another state agency under provisions of federal or state law. Authority is conferred upon the department to accept and disburse any funds available or which might become available pursuant to the purposes set out in this article.

(b) The department shall study, investigate, promote, plan, and execute a program to meet the present and future needs of aging citizens of the state; and it shall receive the cooperation of all other state departments and agencies in carrying out a coordinated program.

(c) It shall also be the duty of the department to encourage and assist in the development of programs for the aging in the counties, towns, and cities of this state. It shall consult and cooperate with public and private agencies, with county and municipal officers and agencies, and with any federal or state agency or officer for the purpose of promoting coordination between state and local plans and programs and between state and interstate plans and programs for the aging. (Ga. L. 1962, p. 604, § 9.)

49-6-3. Powers of department.

Without limiting the foregoing, the department is authorized to:

(1) Promote the health of and medical services for the aging in working with professional associations, hospitals, and institutions;

(2) Promote the rehabilitation of incapacitated older persons;

(3) Establish a state-wide coordinated program with participation of employers, employee's organizations, and state and local agencies to promote greater and more suitable employment opportunities for older persons;

(4) Establish a program of research and education on housing of the aged by either public or private means as well as by the establishment of self-sustaining cooperative dwelling projects for aging persons;

(5) Plan and promote recreational facilities for the aging;

(6) Develop a program of adult education designed for older persons on subjects of particular concern to them;

(7) Encourage the further research in the colleges and universities of the state on problems of the aging;

(8) Encourage training of personnel to handle problems of the aging;

(9) Promote community education in the problems of older people through institutes, publications, radio, television, and the press;

(10) Provide consultation to communities and groups developing state-wide or local services for older people;

(11) Provide consultation to the various departments of state government concerning matters relating to the aging;

(12) Inquire into and make recommendations to the appropriate agencies, public or private, on any matter affecting the behavior, care, or welfare of the aging;

(13) Enlist the aid of public and private agencies concerned with the welfare of the aging; and study and report on the functions and facilities of governmental agencies and institutions charged with the care, control, protection, and rehabilitation of the aging;

(14) Serve as a communications clearing-house for information in the large and complex fields of human relationship in respect to aging;

(15) Conduct or participate financially in conducting demonstration projects with counties, municipalities, or public or private agencies concerned with problems of the aging;

(16) Do any other thing it deems necessary to promote the health and well-being of the aging citizens of this state not inconsistent with the purposes of this article or the public policies of this state; and

(17) Appoint such committees, on a nonpay basis, as it deems necessary for carrying out the purposes of this article. (Ga. L. 1962, p. 604, § 10.)

Cross references. — Financing of residential care facilities for the elderly, § 31-7-110 et seq.

Rules and Regulations of the State of Georgia, Rules of Department of Human Resources, Chapter 290-5-8.

Administrative rules and regulations. — Nursing homes, Official Compilation of the

49-6-4. Acceptance of federal and other grants, gifts, bequests, or devises.

The department may receive and accept on behalf of the state any grant or grant-in-aid from the federal government or any grant, gift, bequest, or devise from any other source; and title shall pass to the state unless otherwise specified by the grantor. (Ga. L. 1962, p. 604, § 11.)

49-6-5. Creation of the Division of Aging Services within department.

The Division of Aging Services, administratively established previously within the department, is statutorily established. The Division of Aging Services established by this Code section shall have those functions, duties, powers, and responsibilities heretofore assigned by the board and the commissioner and as hereafter so assigned or as provided by law. (Ga. L. 1980, p. 1008, § 1; Ga. L. 2009, p. 453, § 2-5/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Division of Aging Services" for "Office of Aging Section" twice in this Code section.

49-6-6. Annual report.

It shall be the duty of the department to submit an annual report to the Governor and to notify the General Assembly of such report on or before January 1 of each year, setting forth the results of its studies, accomplishments, and recommendations, if any, for legislation. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Ga. L. 1962, p. 604, § 12; Ga. L. 2005, p. 1036, § 42/SB 49.)

49-6-7. Funds for expenses.

All expenses incurred in administering and carrying this article into effect shall be paid out of funds appropriated by the General Assembly for that purpose or out of such other funds as may be made available. (Ga. L. 1962, p. 604, § 13.)

ARTICLE 2

COUNCIL ON AGING

49-6-20. Council created; appointment and terms of members; officers; rules; meetings.

(a) There is created the Council on Aging. The council shall be composed of 20 members, at least ten of whom shall be consumers of services under programs of the Division of Aging Services of the Department of Human Services or similar state agencies. The ten consumer members shall include low income and minority older persons at least in proportion to their number in the population of the state. The remaining ten members of the council shall be representative of major public and private agencies and organizations in the state and shall be experienced in or have demonstrated particular interest in the needs of the elderly. The members of the council shall be appointed as follows:

(1) Four consumer members and four members representing public and private agencies and organizations shall be appointed by the Governor;

(2) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the President of the Senate;

(3) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the Speaker of the House; and

(4) Two consumer members and two members representing public and private agencies and organizations shall be appointed by the commissioner.

(b) Each member's term shall be for two years and until his successor is appointed and qualified. The members of the council shall be eligible to succeed themselves. The council shall elect its own chairman and such other officers as it deems necessary. The council may adopt rules and procedures. The council shall meet upon the call of its chairman, the board, or the commissioner. (Ga. L. 1972, p. 1015, § 1219; Ga. L. 1977, p. 815, § 1; Ga. L. 2009, p. 453, §§ 2-2, 2-5/HB 228.)

The 2009 amendment, effective July 1, 2009, in the second sentence of the introductory language of subsection (a), substituted "Division of Aging Services" for "Office of Aging Section" and substituted "Department of Human Services" for "Department of Human Resources".

49-6-21. Duties and powers of council.

The Council on Aging shall serve in an advisory capacity to the Governor, the General Assembly, the board, the department, and all other state agencies in matters relating to the elderly. In particular, the council shall:

- (1) Make recommendations concerning the establishment and maintenance of an adequate program for the elderly in Georgia;
- (2) Recommend standards for services for the elderly;
- (3) Aid the department and other state agencies in coordinating programs for the elderly;
- (4) Establish indices to determine the effectiveness of programs for the aged;
- (5) Ensure that regular, adequate, and accurate reports are submitted by the component parts of aging programs to the council;
- (6) Publish regular reports of the council's activities and the adequacy of state programs for the aged; and
- (7) Establish liaison with area agency councils on aging. (Ga. L. 1977, p. 815, § 2.)

49-6-21.1. (Repealed effective January, 1, 2011) Additional duties and powers of council; report and recommendations.

(a) In addition to those duties and powers set forth in Code Section 49-6-21, the Council on Aging shall provide a written report entitled "Project 2020: Georgia for a Lifetime" to the Governor, the President of the Senate, and the Speaker of the House of Representatives, and such report shall be provided no later than December 15, 2010. The President of the

Senate and the Speaker of the House of Representatives shall direct the report to the appropriate committees for review. The council shall notify members of the General Assembly and any state department or agency mentioned in or affected by the report of the availability of such report, and such notification shall be given in the manner which the council deems most effective and efficient.

(b) As part of the report required by subsection (a) of this Code section, the council shall research, identify, evaluate, and make recommendations on:

(1) State policies regarding older adults and state agencies' readiness for the expanding aging population;

(2) The projected impact that this state's increasing aging population will have on health, protection, safety, housing, transportation, employment, caregiving, education, the economy, access to services, volunteerism, legal and financial preparedness, and social and recreational resources;

(3) The implementation of specific policies, procedures, and programs to respond to the needs and impact of the aging population relating to health, protection, safety, housing, transportation, employment, caregiving, education, the economy, access to services, volunteerism, legal and financial preparedness, and social and recreational resources;

(4) Ways to increase public and governmental understanding of the current and future needs of the state's aging population, to increase state government readiness, and to increase community preparedness for an aging Georgia;

(5) Ways to facilitate the communication and coordination of public and private entities as they plan for the growing aging population;

(6) The status and effectiveness of policies, procedures, and programs that engage the older population or that provide services to the aging population;

(7) The policies, procedures, initiatives, and programs that other states have implemented to address the needs of their aging populations;

(8) The policies, procedures, initiatives, and programs that other states have developed and implemented to engage older adults as volunteers and mentors;

(9) Methods to provide a forum for public comment on planning issues relating to the aging population; and

(10) Ways to encourage public and private entities to analyze, plan, and prepare for the impact of the aging population.

(c) In preparing the report required by subsection (a) of this Code section, the council may hire experts and shall hear from key leaders of the public and private sectors in the various areas relating to the aging population.

(d) For the purpose of assisting the council in carrying out the provisions of this Code section, the council may appoint an advisory committee of not more than 17 members. The members of such advisory committee shall serve at the pleasure of the council. Members of the advisory committee shall receive no compensation for the performance of their duties but shall be reimbursed for actual travel and other reasonable and necessary expenses incurred while attending called meetings of the advisory committee. If such an advisory committee is appointed, it shall meet at least quarterly.

(e) The council is authorized to call upon for cooperation and shall receive the cooperation of any state department or agency in carrying out the provisions of this Code section.

(f) The council shall apply for any applicable grants and resources, public and private, for which it may qualify for executing its duties and powers under this Code section.

(g) Not later than December 15, 2009, the council shall provide the Governor, the President of the Senate, and the Speaker of the House of Representatives with a written interim progress report on the status of the report required by subsection (a) of this Code section. The President of the Senate and the Speaker of the House of Representatives shall direct the interim progress report to the appropriate committees for review. The council shall notify members of the General Assembly and any state department or agency mentioned in or affected by the interim progress report of the availability of such report, and such notification shall be given in the manner which the council deems most effective and efficient.

(h) This Code section shall stand repealed in its entirety on January 1, 2011. (Code 1981, § 49-6-21.1, enacted by Ga. L. 2008, p. 366, § 1/SB 341.)

Effective date. — This Code section became effective July 1, 2008.

Editor's notes. — Ga. L. 2008, p. 366, § 2, not codified by the General Assembly, provides that this Code section becomes effective only when funds are specifically appropriated for purposes of this Act in an

appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2008 session of the General Assembly.

49-6-22. Staff and facilities; expenses of council members.

The Council on Aging shall be provided with staff personnel, office facilities, and other necessary items by the department. Each member of the council shall be reimbursed for actual expenses incurred in the perfor-

mance of his duties from funds available to the department. (Ga. L. 1977, p. 815, § 3.)

ARTICLE 3

SILVER-HAIRED LEGISLATURE

49-6-40. Creation; membership; meetings, organization, and adoption of measures.

There is created the Georgia Silver-Haired Legislature. Its members shall be of age 60 or over and shall be duly selected pursuant to procedures developed by the department, the office of the Secretary of State, and the Silver-Haired Legislature in coordination with the state's network of aging programs. The Silver-Haired Legislature is authorized to meet every other year at the state capitol at an appropriate time prior to the convening of the General Assembly. The Silver-Haired Legislature is authorized, within its budgetary limitations, to hire personnel, to solicit private financial support, and to adopt bylaws to govern its internal procedures, and such body is authorized to adopt such measures as it deems appropriate to present to the General Assembly for consideration. (Ga. L. 1980, p. 807; Ga. L. 1997, p. 891, § 1.)

ARTICLE 4

RESERVED

ARTICLE 5

COMMUNITY CARE AND SERVICES FOR THE ELDERLY

<p>Cross references. — Long-term care ombudsman program, § 31-8-50 et seq. Reporting of abuse or exploitation of residents in</p>	<p>long-term care facilities, § 31-8-80 et seq. Rights of residents of long-term care facilities generally, § 31-8-100 et seq.</p>
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OPINIONS OF THE ATTORNEY GENERAL

<p>Area agencies may not provide case management services. — Area agencies on aging, as part of area planning and development commissions, are not authorized to provide</p>	<p>case management services pursuant to the Community Care and Services for the Elderly Act, O.C.G.A. § 49-6-60 et seq. 1984 Op. Att'y Gen. No. 84-62.</p>
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RESEARCH REFERENCES

<p>Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare, Laws, § 49.</p>	<p>C.J.S. — 81 C.J.S., Social Security and Public Welfare, § 189.</p>
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49-6-60. Legislative intent.

The purpose of this article is to assist functionally impaired elderly persons in living dignified and reasonably independent lives in their own homes or in the homes of relatives or caregivers through the development, expansion, reorganization, and coordination of various community based services. In recognition of the desire of older Georgians to reside at home or with their families as long as possible, the General Assembly intends that a continuum of care be established so that functionally impaired elderly persons age 60 and older may be assured the least restrictive environment suitable to their needs. The General Assembly further intends to maximize the utilization of existing community social and health services in order to prevent unnecessary placement of individuals in long-term care facilities. The development of innovative approaches to program management, staff training, and service delivery that impact on cost avoidance, cost effectiveness, and program efficiency shall be encouraged. It is further the intent of the General Assembly that the Department of Human Resources (now known as the Department of Human Services) shall serve as the agency responsible for planning and implementing the provision of community based services to the elderly reimbursable under the "Georgia Medical Assistance Act of 1977." (Code 1933, § 88-1901D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-60, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-25/HB 228.)

The 2009 amendments. — The first 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in this Code section. The second 2009 amendment, effective

July 1, 2009, substituted "community based services" for "community-based services" in the first and last sentences, and inserted "(now known as the Department of Human Services)" in the last sentence.

49-6-61. Definitions.

As used in this article, the term:

(1) "Aging section" means the single organizational unit within the Department of Human Services responsible for the planning and administration of services under the Older Americans Act of 1965.

(2) "Department" means the Department of Human Services.

(3) "Functionally impaired elderly person" means any person 60 years of age or older with physical or mental limitations that restrict individual ability to perform the normal activities of daily living and which impede individual capacity to live independently.

(4) The "Georgia Medical Assistance Act of 1977" means Article 7 of Chapter 4 of this title.

(5) “Lead agency” means one or more agencies designated by the Department of Human Services to assess services needed by functionally impaired elderly persons, to coordinate and provide community care services to those persons, provide case management, and, where necessary, subcontract with providers of service. A lead agency shall be either a private nonprofit entity or any public entity, including but not limited to any organizational unit of the department.

(6) “Older Americans Act of 1965” means P.L. 92-258, as amended, on July 1, 1982. (Code 1933, § 88-1902D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-61, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraphs (1), (2), and (5).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “this title” was

substituted for “Title 49 of the Official Code of Georgia Annotated” in paragraph (4).

U.S. Code. — The federal Older Americans Act of 1965, referred to in subsection (a), is codified at 42 U.S.C. § 3001 et seq.

49-6-62. Establishment of community care unit; provision of services; annual service plan; implementation plan; annual progress report; fees and contributions; funding.

(a) The department shall establish a community care unit within the aging section. The community care unit shall plan and oversee implementation of a system of coordinated community care and support services for the elderly. The community care unit shall develop uniform assessment criteria that shall be used to determine an individual’s functional impairment and to evaluate on a periodic basis the individual’s need for community support services or institutionalized long-term care. The community care unit shall also define each community care service and establish standards for the delivery of community care services. Where appropriate, the community care unit shall utilize existing standards and definitions.

(b) The department shall designate specified geographic service areas which shall be defined in such a way as to ensure the efficient delivery of community care services.

(c) The department shall contract with a lead agency to coordinate and provide community care services within each specified geographic service area.

(d) Each lead agency shall annually submit to the community care unit for approval a service plan evaluating the community care needs of the functionally impaired elderly, identifying priority services and target client groups, and detailing the means by which community care services will be

delivered for the service area of that agency. The plan shall also include projected program costs and fees to be charged for services. The lead agency may exclude from the service plan those individuals eligible for benefits under the "Georgia Medical Assistance Act of 1977," as amended, for whom there is a reasonable expectation that community based services would be more expensive than services the individual would otherwise receive which would have been reimbursable under the "Georgia Medical Assistance Act of 1977," as amended.

(e) The department shall develop a plan which shall provide for the implementation of a community care system in each of the specified geographic service areas by July 1, 1985. The three-year plan shall be developed concurrent with and integrated into the state plan on aging required under the Older Americans Act of 1965 and shall provide for coordination of all community based services for the elderly. The three-year plan shall include an inventory of existing services and an analysis comparing the cost of institutional long-term care and the cost of community care and other community based services for the elderly. The multiyear plan shall be presented to the Board of Human Services no later than July 31, 1983.

(f) At the end of the three-year implementation period an annual community care service plan shall be incorporated into the state plan on aging.

(g) The department shall submit on January 1 of each year, beginning in 1984, a progress report on the implementation of the plan required by subsection (e) of this Code section to the Speaker of the House of Representatives, the Senate Committee on Assignments, the chairman of the House Health and Human Services Committee, and the chairman of the Senate Health and Human Services Committee.

(h) In accordance with rules promulgated by the department, lead agencies may collect fees for community care case management and other services. Such fees shall be established on a sliding scale based upon income and economic need. Fees will not be charged those individuals for the mandatory assessment described in subsection (e) of Code Section 49-6-63. Lead agencies may accept contributions of money or contributions in kind from functionally impaired elderly persons, members of their families, or other interested persons or organizations. Such contributions may not be a condition of services and shall only be used to further the provision of community care services.

(i) Funding for services under this article shall be in addition to and not in lieu of funding for existing community services for the elderly. The department and the lead agency shall ensure that all other funding sources available, including reimbursement under the "Georgia Medical Assistance Act of 1977" and the Older Americans Act of 1965, have been used prior to

utilizing state funds for community care for the elderly. (Code 1933, § 88-1903D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-62, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 1984, p. 22, § 49; Ga. L. 1985, p. 149, § 49; Ga. L. 1992, p. 6, § 49; Ga. L. 2005, p. 48, § 8/HB 309; Ga. L. 2009, p. 8, § 49/SB 46; Ga. L. 2009, p. 453, § 2-3/HB 228.)

The 2009 amendments. — The first 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsections (d) and (e). The second 2009 amendment, effective July 1, 2009, substituted “Board of Human Services” for “Board of Human

Resources” in the last sentence of subsection (e).

U.S. Code. — The federal Older Americans Act of 1965, referred to throughout this Code section, is codified at 42 U.S.C. § 3001 et seq.

49-6-63. Establishment by lead agency of community care service system; certification for benefits; evaluation by assessment team; volunteers; insurance coverage.

(a) Each lead agency shall be responsible for the establishment of a community care service system which shall have as its primary purpose the prevention of unnecessary institutionalization of functionally impaired elderly persons through the provision of community based services. Each community care service system shall provide no fewer than six of the services listed in subsection (c) of this Code section, four of which shall include case management, assessment of functional impairment and needed community services, homemaker, and home health care services. Case management services shall be provided to each community care service recipient to ensure that arrangements are made for appropriate services. If independent living is no longer possible for a functionally impaired elderly person, the case manager shall assist the person in locating the most appropriate, least restrictive, and most cost beneficial alternative living arrangement.

(b) All existing community resources available to the functionally impaired elderly person shall be coordinated into the community care service system to provide a continuum of care to such persons. The lead agency shall establish agreements, policies, and procedures for service integration and referral mechanisms with such programs.

(c) Services to be coordinated by the lead agency shall include, without being limited to, the following:

- (1) Case management;
- (2) Assessment of functional impairment and needed community services;
- (3) Homemaker services;
- (4) Home health care services;

- (5) In-home personal care services;
- (6) Adult day health services;
- (7) Adult day care;
- (8) Habilitation services;
- (9) Respite care;
- (10) Older Americans Act services, including transportation, nutritional, social, and other services;
- (11) Title XX services;
- (12) Senior center services;
- (13) Protective services;
- (14) Financial assistance services, including, but not limited to, food stamps, Medicaid, Medicare, and Supplemental Security Income;
- (15) Health maintenance services; and
- (16) Other community services.

(d) Priority in provision of community care services shall be given to those individuals who have been certified for skilled or intermediate institutional nursing care service benefits conferred by the "Georgia Medical Assistance Act of 1977" and who need home and community based services in order to avoid institutionalization. Services may be provided to other functionally impaired persons as resources allow, as determined by the department. Priority in provision of community care services to such other persons will be based on economic, social, and medical needs.

(e) All individuals seeking certification for benefits conferred by the "Georgia Medical Assistance Act of 1977," as amended, to be used to pay the cost of placement in a long-term care facility or individuals who would be eligible for such benefits within 180 days of nursing home admission, shall, as a precondition to that certification, undergo evaluation by an assessment team designated by the lead agency to determine if institution-alization can be avoided by provision of more cost-effective community based services. If the individual being evaluated requires community based services which, over a 12 month period, would cost more than the cost of care in a long-term care facility, then such community based services shall not be deemed cost effective. Such cost-effective determination shall apply to each case management evaluation. The assessment team shall, at a minimum, consist of a physician, a registered nurse, and a social worker. Whenever possible, the assessment team shall be responsible for the precertification for nursing home placement and determination of the appropriate level of care, as required by the State Plan for Medical Assistance, as defined in the "Georgia Medical Assistance Act of 1977."

(f) The decision of the assessment team shall be forwarded to the agency designated in the State Plan for Medical Assistance, as defined in the “Georgia Medical Assistance Act of 1977,” as responsible for the certification of benefits for individuals. If the assessment team and the case manager have determined that an individual could be better and more cost effectively served in the community, said agency shall not certify said individual for skilled or intermediate institutional nursing care service benefits until the lead agency has informed that individual of the availability of community based services within the lead agency’s geographic service area and of the right of that individual to choose to receive those services as an alternative to placement in a long-term care facility. That individual shall advise the lead agency of that individual’s choice of service alternatives. If that individual is otherwise eligible for those benefits for which certification is sought, the agency responsible for certification of benefits shall certify the individual either for placement in a long-term care facility or for receiving community based services, as the individual advised the lead agency. The evaluation and certification shall be completed in a timely manner.

(g) The lead agency shall seek to utilize volunteers to provide community services for functionally impaired elderly persons. The department may provide appropriate insurance coverage to protect volunteers from personal liability while acting within the scope of their volunteer assignments in the community care service system. Coverage may also include excess automobile liability protection. (Code 1933, § 88-1904D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-63, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38; Ga. L. 2009, p. 8, § 49/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsections (e) and (f).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “community based” was substituted for “community-based” in the first sentences of subsections (a) and (d).

U.S. Code. — The federal Older Americans Act of 1965, referred to in paragraph (c)(10), is codified at 42 U.S.C. § 3001 et seq.

Paragraph (c)(11) refers to grants to states for services under “Title XX,” a reference to Title XX of the federal Social Security Act of 1935, which is codified at 42 U.S.C. § 1397 et seq.

49-6-64. Adoption of rules and regulations.

The department shall adopt rules and regulations necessary to implement the provisions of this article. (Code 1933, § 88-1905D, enacted by Ga. L. 1982, p. 2248, § 1; Code 1981, § 49-6-64, enacted by Ga. L. 1982, p. 2248, § 4; Ga. L. 1983, p. 3, § 38.)

ARTICLE 6

GEORGIA FAMILY CAREGIVER SUPPORT

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Alzheimer's to Appoint Guardian Based on Incapacity, 18 and Multi-Infarct Dementia — Proceedings POF3d 185.

49-6-70. Short title.

This article shall be known and may be cited as the "Georgia Family Caregiver Support Act." (Code 1981, § 49-6-70, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-71. Purpose.

The purpose of this article shall be to establish a comprehensive caregiver program which will marshal and integrate available resources and services to provide support and services to caregivers of chronically dependent adults. This article exists to coordinate assistance and maximize available services while maintaining and supporting existing services for caregivers. Such assistance may include:

(1) Coordination and integration of information and services to caregivers in Georgia, including, but not limited to, insurance and benefits counseling, respite services available under the community care services program, the state respite or adult day-care program, or the Older Americans Act of 1965, as amended, and coordination with educational and other services offered by the caregiver resource center;

(2) Assistance to the caregiver to assure that supports to the functionally dependent older adult or adult suffering from dementia are adequate and appropriate to maintain these individuals in the home;

(3) Intermittent, planned, or emergency relief to the caregiver, either directly or through use of other available resources and services;

(4) Restoration or maintenance of the caregiver's well-being;

(5) Preservation of the caregiver's informal supports such as family and friends;

(6) Supportive social services to the caregiver; and

(7) Affordable services through a cost-sharing mechanism developed by the Division of Aging Services of the department for those families whose household incomes do not exceed 400 percent of the federal poverty level. (Code 1981, § 49-6-71, enacted by Ga. L. 1994, p. 455, § 1.)

U.S. Code. — The federal Older Americans Act of 1965, referred to in paragraph (1), is codified at 42 U.S.C. § 3001 et seq.

49-6-72. Definitions.

As used in this article, the term:

(1) “Adult” means a person 18 years or older residing within the State of Georgia who is a functionally dependent older adult or who is suffering from dementia, such as Alzheimer’s disease.

(2) “Area agency on aging” means the single local agency designated by the Division of Aging Services of the department within each planning and service area to administer the delivery of a comprehensive and coordinated plan of social and other services and activities in the planning and service area.

(3) “Dementia” means: (A) an irreversible global loss of cognitive function causing evident intellectual impairment which always includes memory loss, without alteration of state of consciousness, as diagnosed by a physician, and is severe enough to interfere with work or social activities, or both, and to require continuous care or supervision; or (B) the comatose state of an adult resulting from any head injury.

(4) “Department” means the Department of Human Services.

(5) “Functionally dependent older adult” means a person 60 years of age or older residing within the State of Georgia who, because of his or her inability to perform tasks required for daily living, as defined by the department and as may be assessed through an area agency on aging or community care assessment team, needs continuous care and supervision.

(6) “Home modification” means reasonable modifications to the structure of a home for the purpose of reducing the caregiving burden of the caregiver, as approved by the department, but does not include repairs and payment for such repairs.

(7) “Household income” means the income of all members of a household with the exception of a minor or dependent student.

(8) “Income” means all income, from whatever source derived, including, but not limited to, wages, salaries, social security or railroad retirement income, public assistance income, realized capital gains, and workers’ compensation. The department shall determine income amounts and inclusions for the purposes of this article through regulation.

(9) “Primary caregiver” means the one identified relative or other person in a relationship of responsibility, such as an agent under a valid

durable power of attorney for health care or health care agent under a valid advance directive for health care, who has assumed the primary responsibility for the provision of care needed to maintain the physical or mental health of a functionally dependent older adult or other adult suffering from dementia, who lives in the same residence with such individual, and who does not receive financial compensation for the care provided. A substantiated case of abuse, neglect, or exploitation, as defined in Chapter 5 of Title 30, the “Disabled Adults and Elder Persons Protection Act,” or pursuant to any other civil or criminal statute regarding an older adult, shall prohibit a primary caregiver from receiving benefits under this article unless authorized by the department to prevent further abuse.

(10) “Relative” means a spouse, parent, child, stepparent, stepchild, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, great aunt, great uncle, niece, or nephew by blood, marriage, or adoption.

(11) “Respite care service” means a regular, intermittent, or emergency service which provides the primary caregiver of a functionally dependent older adult or other adult suffering from dementia with relief from normal caregiving duties and responsibilities. (Code 1981, § 49-6-72, enacted by Ga. L. 1994, p. 455, § 1; Ga. L. 2007, p. 133, § 18/HB 24; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2007 amendment, effective July 1, 2007, inserted “or health care agent under a valid advance directive for health care” in the first sentence of paragraph (9).

The 2009 amendment, effective July 1, 2009, substituted “Department of Human Services” for “Department of Human Resources” in paragraph (4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, “workers’” was substituted for “worker’s” in the first sentence in paragraph (8).

Pursuant to Code Section 28-9-5, in 2006, “Disabled Adults and Elder Persons Protection Act” was substituted for “Disabled Adults Protection Act” in the last sentence of paragraph (9).

Editor’s notes. — Ga. L. 2007, p. 133, § 1, not codified by the General Assembly, provides: “(a) The General Assembly has long recognized the right of the individual to control all aspects of his or her personal care and medical treatment, including the right to insist upon medical treatment, decline medical treatment, or direct that medical treatment be withdrawn. In order to secure these rights, the General Assembly has

adopted and amended statutes recognizing the living will and health care agency and provided statutory forms for both documents.

“(b) The General Assembly has determined that the statutory forms for the living will and durable power of attorney for health care are confusing and inconsistent and that the statutes providing for the living will and health care agency contain conflicting concepts, inconsistent and out-of-date terminology, and confusing and inconsistent requirements for execution. In addition, there is a commendable trend among the states to combine the concepts of the living will and health care agency into a single legal document.

“(c) The General Assembly recognizes that a significant number of individuals representing the academic, medical, legislative, and legal communities, state officials, ethics scholars, and advocacy groups worked together to develop the advance directive for health care contained in this Act, and the collective intent was to create a form that uses understandable and everyday language in order to encourage more citizens of this

state to execute advance directives for health care.

“(d) The General Assembly finds that the clear expression of an individual’s decisions regarding health care, whether made by the individual or an agent appointed by the individual, is of critical importance not only to citizens but also to the health care and

legal communities, third parties, and families. In furtherance of these purposes, the General Assembly enacts a new Chapter 32 of Title 31, setting forth general principles governing the expression of decisions regarding health care and the appointment of a health care agent, as well as a form of advance directive for health care.”

49-6-73. Eligibility for benefits; contracts; identification of services.

(a) The persons to be served under this article are primary caregivers who provide continuous care to a functionally dependent older adult or other adult suffering from dementia, such as Alzheimer’s disease.

(b) The department shall develop operating procedures and guidelines and shall contract with or through area agencies on aging to provide benefits set forth in this article. The department may also contract with other support centers or service providers directly, where such service is provided on a state-wide basis or where necessary or appropriate. The department shall have the authority to develop criteria through regulation relating to eligibility for primary caregivers to receive assistance pursuant to this article.

(c) The department shall identify supportive services which are directly related to the provision of care to a functionally dependent older adult or other adult suffering from dementia. Supportive services include, but are not limited to:

(1) Benefits counseling and caregiver counseling, education, and training;

(2) Reimbursement to primary caregivers whose households financially qualify for assistance pursuant to Code Section 49-6-74 and as developed by regulation of the department for expenses incurred in obtaining day or night respite care services, transportation to respite care service locations, or other supportive services defined by regulation, and consumable supplies such as incontinence pads; and

(3) Reimbursement to primary caregivers whose households financially qualify for assistance pursuant to Code Section 49-6-74 and as developed by regulation for expenses incurred in obtaining home modifications or assistive devices, as approved by the department, such as grab bars, safety devices, and wheelchair ramps, which help the functionally dependent older adult or adult suffering from dementia carry out tasks required for daily living. (Code 1981, § 49-6-73, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-74. Provision of services; reimbursement of caregivers; maximum amounts available.

(a) The department, through contracts with or through area agencies on aging and other appropriate entities, shall provide the services described in paragraph (1) of subsection (c) of Code Section 49-6-73 and shall reimburse qualified primary caregivers for purchase of approved services, equipment, and supplies described in paragraphs (2) and (3) of subsection (c) of Code Section 49-6-73.

(b)(1) The maximum amount available to a qualified primary caregiver whose household income is under 200 percent of the federal poverty level shall be established by regulation. The department shall be responsible for developing allowable cost ranges for services and supplies under paragraphs (1) and (2) of subsection (c) of Code Section 49-6-73, including the development of maximum amounts available per month to a caregiver, where necessary.

(2) The maximum amount available to a qualified caregiver whose household income is under 200 percent of federal poverty level shall be established by regulation but shall not exceed \$2,000.00 for the entire duration of the case for expenses incurred for home modifications or assistive devices as described in paragraph (3) of subsection (c) of Code Section 49-6-73.

(3) A sliding benefits scale shall be established by the department by regulation to ensure that caregivers who qualify under this article and whose household income exceeds 200 percent of the federal poverty level shall pay some portions of the out-of-pocket expenses for services, equipment, and supplies described in subsection (c) of Code Section 49-6-73. In no event will persons whose household income exceeds 400 percent of the federal poverty level be considered eligible for state funded services, equipment, or supplies under this article but such persons may purchase such services through this program by paying the entire cost of such services. (Code 1981, § 49-6-74, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-75. Entitlements not created.

Nothing in this article creates or provides any individual with an entitlement to services, equipment, and supplies or benefits which will be made available only to the extent of the availability and level of appropriations made by the General Assembly. (Code 1981, § 49-6-75, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-76. Displacement of other programs prohibited.

Funding authorized under this article shall not be used to displace benefits, entitlements, or resources available under other programs. (Code 1981, § 49-6-76, enacted by Ga. L. 1994, p. 455, § 1.)

49-6-77. Rules and regulations.

The department shall adopt rules and regulations necessary to implement the provisions of this article. (Code 1981, § 49-6-77, enacted by Ga. L. 1994, p. 455, § 1.)

ARTICLE 7**LICENSURE OF ADULT DAY CENTER**

Effective date. — This article as enacted by Ga. L. 2003, p. 298, § 1 as Code Sections 49-6-80 through 49-6-85 became effective July 1, 2008.

Cross references. — Protection of disabled adults and elder persons, § 30-5-1 et seq. Disclosure of treatment of Alzheimer's Disease or Alzheimer's related dementia, § 31-8-180 et seq.

Editor's notes. — Ga. L. 2003, p. 298, § 3(b), not codified by the General Assem-

bly, provides that this article, as enacted by Ga. L. 2003, p. 298, § 1 as Code Sections 49-6-80 through 49-6-85, shall become effective July 1 of the fiscal year following the year in which funds are specifically appropriated for the purposes of this Act in an appropriations Act making specific reference to this Act and shall become effective when funds so appropriated become available for expenditure. Funds were appropriated at the 2007 session of the General Assembly.

49-6-80. Short title.

This article shall be known and may be cited as the "Adult Day Center for Aging Adults Licensure Act." (Code 1981, § 49-6-80, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-81. Legislative intent.

The intent of the General Assembly is to promote, safeguard, and protect the well-being of adults participating in adult day care or adult day health services by authorizing, promoting, and supporting licensure regulations for adult day care and adult day health services providers. It is further the intent of the General Assembly that the Department of Community Health shall serve as the agency responsible for promulgating, implementing, and enforcing the licensure regulations. (Code 1981, § 49-6-81, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human

Resources" in the second sentence of this Code section.

49-6-82. Definitions.

As used in this article, the term:

- (1) "Adult day care" means the provision of a comprehensive plan of services that meets the needs of aging adults, as defined in paragraph (4) of this Code section, under a social model, as defined in paragraph (9) of

this Code section. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

(2) "Adult day center" means a facility serving aging adults that provides adult day care or adult day health services, as defined in paragraphs (1) and (3) of this Code section, for compensation, to three or more persons. This term shall not include a respite care services program.

(3) "Adult day health services" means the provision of a comprehensive plan of services that meets the needs of aging adults under a medical model, as defined in paragraph (6) of this Code section. This term shall not include programs which provide day habilitation and treatment services exclusively for individuals with developmental disabilities.

(4) "Aging adults" means persons 60 years of age or older or mature adults below the age of 60 whose needs and interests are substantially similar to persons 60 years of age or older who have physical or mental limitations that restrict their abilities to perform the normal activities of daily living and impede independent living.

(5) "Department" means the Department of Community Health.

(6) "Medical model" means a comprehensive program that provides aging adults with the basic social, rehabilitative, health, and personal care services needed to sustain essential activities of daily living and to restore or maintain optimal capacity for self-care. Such program of care shall be based on individual plans of care and shall be provided for less than 24 hours per day.

(7) "Primary caregiver" means the one identified relative or other person in a relationship of responsibility, such as an agent under a valid durable power of attorney for health care or health care agent under a valid advance directive for health care, who has assumed the primary responsibility for the provision of care needed to maintain the physical or mental health of an aging adult, who lives in the same residence with such individual, and who does not receive financial compensation for the care provided.

(8) "Respite care services program" means a program for aging adults who can function in a group setting and who can feed and toilet themselves with or without the assistance of a personal aide accompanying them which:

(A) Is operated by a nonprofit organization;

(B) Provides no more than 25 hours of services per week;

(C) Is managed by a director who has completed an adult day care services training and orientation program approved by the department;

(D) Is staffed primarily by volunteers; and

(E) Has as its sole purpose to provide primary caregivers of aging adults with relief from normal caregiving duties and responsibilities.

(9) “Social model” means a program that addresses primarily the basic social and recreational activities needed to be provided to aging adults, but also provides, as required, limited personal care assistance, supervision, or assistance essential for sustaining the activities of daily living. Such programs of care shall be based on individual plans of care and shall be provided for less than 24 hours per day. (Code 1981, § 49-6-82, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2008, p. 537, § 1/HB 1044; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2008 amendment, effective July 1, 2008, in paragraph (1), substituted “paragraph (9)” for “paragraph (7)” in the first sentence, and added the last sentence; in paragraphs (2) and (3), added the last sentence; added paragraphs (7) and (8); and

redesignated former paragraph (7) as present paragraph (9).

The 2009 amendment, effective July 1, 2009, substituted “Department of Community Health” for “Department of Human Resources” in paragraph (5).

49-6-83. License required; nontransferable.

No person, business entity, corporation, or association, whether operated for profit or not for profit, shall operate an adult day center without first obtaining a license or a provisional license from the department. A license issued under this article shall not be assignable or transferable. (Code 1981, § 49-6-83, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-84. Authority of department; promulgation of rules and regulations; authority to issue or suspend licenses.

The department is authorized to promulgate rules and regulations to implement this article utilizing the public rule-making process to elicit input from consumers, providers, and advocates. The department is further authorized to issue, deny, suspend, or revoke licenses or take other enforcement actions against licensees or applicants as provided in Code Section 31-2-11. All rules and regulations and any enforcement actions initiated by the department shall comply with the requirements of Chapter 13 of Title 50, the “Georgia Administrative Procedure Act.” (Code 1981, § 49-6-84, enacted by Ga. L. 2003, p. 298, § 1; Ga. L. 2009, p. 453, § 1-56/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “Code Section 31-2-11” for “Code Section 31-2-6” in the second sentence of this Code section.

49-6-85. Periodic inspection by department; exemptions.

An adult day center for which an application for a license has been submitted or to which a license has been issued shall be inspected by the department periodically and as determined necessary to monitor such center's compliance with applicable laws and regulations; provided, however, the department may exempt a center from inspection if such center has been certified or accredited by a certification or accreditation entity recognized and approved by the department if such entity uses standards that are substantially similar to those established by the department. A center seeking exemption from inspection shall be required to submit to the department documentation of certification or accreditation, including a copy of its most recent certification or accreditation inspection report, which shall be maintained by the department as a public record. (Code 1981, § 49-6-85, enacted by Ga. L. 2003, p. 298, § 1.)

49-6-86. (For effective date, see note.) Reasonable fees for licensure of adult day centers; use of fees.

The department shall be authorized to charge reasonable application fees, license fees, renewal fees, or other similar fees relating to the licensure of adult day centers in an amount established by the board pursuant to rules and regulations. The board shall take into consideration input from consumers, providers of adult day health services, and advocates during the rulemaking process to establish such fees. If so appropriated by the General Assembly, the fees shall be used to support the licensing, inspecting, and monitoring of adult day centers. Fees may be refunded by the department for good cause, as determined by the department. (Code 1981, § 49-6-86, enacted by Ga. L. 2007, p. 348, § 2/HB 505.)

Delayed effective date. — Ga. L. 2007, p. 348, § 3 provides this Code section becomes effective only when funds are specifically appropriated for purposes of the Act in an

Appropriations Act making specific reference to that Act. Funds were not appropriated at the 2007, 2008, or 2009 sessions of the General Assembly.

CHAPTER 7

FAMILY-PLANNING SERVICES

Sec.		Sec.	
49-7-1.	Short title.	49-7-6.	Right of employee to refuse to offer services.
49-7-2.	Definitions.	49-7-7.	Plans and programs to carry out chapter; required provisions.
49-7-3.	Persons to whom agencies may offer services.	49-7-8.	Rules and regulations.
49-7-4.	Services may be free.	49-7-9.	Construction of chapter.
49-7-5.	Right to refuse services.		

Cross references. — Female contraceptive devices; insurance coverage, § 33-24-59.6.

49-7-1. Short title.

This chapter shall be known and may be cited as the “Family-Planning Services Act.” (Ga. L. 1966, p. 228, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 79 Am. Jur. 2d, Welfare Laws, §§ 45, 46.

49-7-2. Definitions.

As used in this chapter, the term:

(1) “Agencies” means the department, county boards of health, health districts, county departments of family and children services, and district departments of family and children services.

(2) “Family-planning services” means counseling and interviews with trained personnel regarding birth control, infertility, and family-planning methods and procedures; distribution of literature relating to birth control, infertility, and family planning; referral to licensed physicians or local health departments for consultation, examination, tests, medical treatment, and prescriptions for the purposes of birth control, infertility, and family planning; and, to the extent prescribed, the distribution of rhythm charts, drugs, medical preparations, contraceptive devices, and similar products used for birth control and family planning. (Ga. L. 1966, p. 228, § 2.)

Administrative rules and regulations. — and Regulations of the State of Georgia, Serologic test for syphilis for pregnant women, Official Compilation of the Rules, Rules of Department of Human Resources, Chapter 290-5-21.

RESEARCH REFERENCES

ALR. — Validity of regulations as to contraceptives or the dissemination of birth control information, 96 ALR2d 955.

49-7-3. Persons to whom agencies may offer services.

Within the limitations of the funds available to such agencies, all agencies are authorized to offer family-planning services to any person who is in any one or more of the following classifications:

- (1) Married;
- (2) The parent of at least one child;
- (3) Pregnant; or
- (4) Requesting such services. (Ga. L. 1966, p. 228, § 3; Ga. L. 1968, p. 558, § 1.)

Administrative rules and regulations. — Maternity homes, Official Compilation of the Rules and Regulations of the State of

Georgia, Rules of Department of Human Resources, Chapter 290-2-17 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Any person requesting family planning services is eligible. — The General Assembly intended to make any person requesting family-planning services eligible to receive those services regardless of whether that person is married, pregnant, or the parent of at least one child. 1971 Op. Att'y Gen. No. 71-177.

Minor's ability to consent to treatment

determined by pregnancy or childbirth. — Whether a minor, unmarried female under the age of 18 years can consent to medical treatment for herself when offered in conjunction with family-planning services would depend in each instance on a determination of whether the medical treatment was given in connection with pregnancy or childbirth. 1971 Op. Att'y Gen. No. 71-177.

49-7-4. Services may be free.

Agencies may support family-planning services at no cost to the recipients of such services in accordance with rules and regulations of said agencies. (Ga. L. 1966, p. 228, § 4.)

RESEARCH REFERENCES

ALR. — Legality of voluntary nontherapeutic sterilization, 35 ALR3d 1444.

49-7-5. Right to refuse services.

The refusal of any person to accept family-planning services shall in no way affect the right of such person to receive public assistance or public health services or to avail himself of any other public benefit. The employees of the agencies engaged in the administration of this chapter shall recognize that the right to make decisions concerning family planning and birth control is a fundamental personal right of the individual; and nothing in this chapter shall in any way abridge such individual right, nor shall any individual be required to state his reason for refusing the offer of family-planning services. (Ga. L. 1966, p. 228, § 5.)

49-7-6. Right of employee to refuse to offer services.

Any employee of the agencies engaged in the administration of this chapter may refuse to accept the duty of offering family-planning services to the extent that such duty is contrary to such employee's personal religious beliefs; and such refusal shall not be grounds for any disciplinary action, for dismissal, for any interdepartmental transfer, for any other discrimination in his employment, for suspension from employment, or for any loss in pay or other benefits. The directors or supervisors of such agencies shall be authorized, however, to reassign the duties of any such employees in order to carry out this chapter effectively. (Ga. L. 1966, p. 228, § 6.)

Cross references. — Religious freedom, U.S. Const., Amend. 1 and Ga. Const. 1983, Art. I, Sec. I, Para. III.

RESEARCH REFERENCES

ALR. — Judicial construction and application of state legislation prohibiting religious discrimination in employment, 37 ALR5th 349.

49-7-7. Plans and programs to carry out chapter; required provisions.

The department is authorized and directed to develop plans and programs to carry out this chapter. Such plans and programs shall include, but shall not be limited to, provisions for:

(1) A training program offered by the department for its employees who are in contact with and counsel those persons likely to desire family-planning services. Such training program should be designed to provide such employees with complete information regarding family planning and birth control and all matters related thereto; and

(2) A systematic plan for coordinating the activities of the department and its counterparts at the county and district level in the area of family-planning services. (Ga. L. 1966, p. 228, § 7.)

RESEARCH REFERENCES

ALR. — Propriety of prophylactic availability programs, 52 ALR 5th 477.

49-7-8. Rules and regulations.

The board is authorized and directed to adopt and promulgate rules and regulations to carry out this chapter. Such rules and regulations shall provide the necessary requirements and guides for county and district departments of health and departments of family and children services. (Ga. L. 1966, p. 228, § 8.)

49-7-9. Construction of chapter.

This chapter shall be liberally construed to protect the rights of all individuals to pursue their religious beliefs and to follow the dictates of their own consciences, to prevent the imposition upon any individual of practices offensive to the individual's moral standards, to respect the right of every individual to self-determination in the procreation of children, and to ensure a complete freedom of choice in pursuance of his constitutional rights. (Ga. L. 1966, p. 228, § 9.)

OPINIONS OF THE ATTORNEY GENERAL

Any person requesting family planning services eligible. — Legislature intended to make any person requesting family planning services eligible to receive those services

regardless of whether that person is married, pregnant, or the parent of at least one child. 1971 Op. Att'y Gen. No. 71-177.

CHAPTER 8

ECONOMIC REHABILITATION SERVICES

Sec.		Sec.	
49-8-1.	Short title.	49-8-7.	Opportunity to accept or reject proposals; services must meet minimum requirements of department; utilization of existing service delivery systems; compliance with federal legislation [Repealed].
49-8-2.	Purpose of chapter.		
49-8-3.	Definitions.		
49-8-4.	Administration of chapter.		
49-8-5.	Distribution of funds; local boards of directors; audits; bonding of agency employees.		
49-8-6.	Authorized and unauthorized activities of local agencies.		

49-8-1. Short title.

This chapter shall be known and may be cited as “The Economic Rehabilitation Act of 1975.” (Ga. L. 1975, p. 1645, § 1; Ga. L. 1990, p. 1436, § 1.)

49-8-2. Purpose of chapter.

It is the purpose of this chapter to provide for the administration, allocation, and distribution of funds from the Community Services Block Grant and other funding sources; to provide for the definition of a community action agency; to continue a flexible and decentralized system of state, regional, and local programs; to provide the support for services and activities designed to promote individual and family self-sufficiency and to provide emergency services; to encourage local and state-wide inter-agency collaboration and coordination; to assist local communities in the establishment of demonstration programs to meet the unmet needs of their citizens; and to provide the fiscal support needed to assure the continuation of community action agencies as grantees for federal, state, and other moneys. (Ga. L. 1975, p. 1645, § 3; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 1.)

Administrative rules and regulations. — State of Georgia, Rules of Department of Hospital care for the indigent, Official Compilation of the Rules and Regulations of the Human Resources, Chapter 290-5-5.

49-8-3. Definitions.

As used in this chapter, the term:

(1) “Board of directors” means the policy-making board of a community action agency.

(2) “Community action agency” means a public or private nonprofit corporation which was a recipient of community services block grant funds on January 1, 1989, or its successors.

(3) “Director” means the person designated by the commissioner of human services to effect the coordination and fiscal accountability of the community services authorized by this chapter.

(4) “Outreach” means staff capability to locate eligible clients, determine and evaluate needs, furnish information, gather data, make referrals, secure transportation, and assist clients in locating existing resources or assist in developing needed resources where none exist.

(5) “Poverty guideline” means the sliding scale of family incomes revised periodically and published as a poverty index in the Federal Register. (Ga. L. 1975, p. 1645, § 2; Ga. L. 1989, p. 1317, § 6.2; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 2; Ga. L. 2009, p. 453, § 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human resources” in paragraph (3).

49-8-4. Administration of chapter.

(a) For purposes of administration, responsibility for the coordination of community services and fiscal accountability shall be determined by the commissioner of human services.

(b) The director is authorized to issue special instructions or rules and regulations as necessary to carry out the intent of this chapter. (Ga. L. 1975, p. 1645, § 4; Ga. L. 1990, p. 1436, § 1; Ga. L. 2009, p. 453, § 2-26/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human resources” at the end of subsection (a).

49-8-5. Distribution of funds; local boards of directors; audits; bonding of agency employees.

(a) Moneys appropriated for the purposes of this chapter shall be allocated by contract with community action agencies. Such allocations shall be approved by the director only upon the submission of a proposal prepared by the agency and approved by the board of directors of the community action agency involved.

(b) Moneys appropriated for the purposes of this chapter and distributed by means of contracts with community action agencies shall continue to include the Community Services Block Grant. Not less than 90 percent of the community services block grant funds allocated for the State of Georgia shall be distributed to community action agencies by means of contracts with the community action agencies.

(c) The community services block grant funds shall continue to be distributed to each community action agency utilizing a formula based upon a pro rata share of Georgia's poverty population contained in each agency's service area.

(d) No funds may be allocated to any community action agency which does not have a policy guaranteeing nondiscrimination in the delivery of services.

(e) No funds may be allocated to any community action agency which does not have a policy-making board of directors. The membership of such board must be made up of no fewer than one-third democratically selected representatives of the client group and no more than one-third public officials or their designees. The remainder of the board shall be composed of members appointed from the public sector.

(f) The director shall be responsible for ensuring that at least an annual fiscal and programmatic audit be conducted of each community action agency to ensure that contract awarded funds are properly and legally utilized and disbursed in accordance with the intentions of this chapter. All employees of each community action agency who handle funds of the agency shall be bonded by a licensed bonding company. (Ga. L. 1975, p. 1645, § 5; Ga. L. 1989, p. 1317, § 6.21; Ga. L. 1990, p. 1436, § 1; Ga. L. 1997, p. 1350, § 3.)

Cross references. — Area planning and development commissions generally, § 50-8-30 et seq.

49-8-6. Authorized and unauthorized activities of local agencies.

(a) Each community action agency shall use funds available to it under this chapter and other sources for the planning, operation, outreach, and evaluation of a variety of community service pilot programs designed to assist the economically disadvantaged and other persons to achieve self-sufficiency. Community action agencies shall maintain a coordinating role in the community.

(b) No community action agency, its board members, its executive officer, or its employees shall be authorized to use funds, facilities, or equipment owned by or available to the agency, including, but not limited to, stationery, postage, duplicating machines, and telephones, in behalf of any candidate for elective office or any political party or in support of any position on a question of public policy which is the subject of a referendum in the area in which such agency is located. No community action agency shall engage in the manufacture, distribution, display, advertising, or mailing of any printed materials in behalf of any candidate for elective office or any political party or in support of any position on a question of

public policy which is the subject of a referendum in the area in which such agency is located.

(c) Work plans submitted to the director must be approved in advance by the board of directors described in paragraph (1) of Code Section 49-8-3. (Ga. L. 1975, p. 1645, § 6; Ga. L. 1990, p. 1436, § 1.)

49-8-7. Opportunity to accept or reject proposals; services must meet minimum requirements of department; utilization of existing service delivery systems; compliance with federal legislation.

Repealed by Ga. L. 1990, p. 1436, § 1, effective July 1, 1990.

Editor's notes. — This Code section was 1981, § 49-8-7, enacted by Ga. L. 1982, p. based on Ga. L. 1982, p. 1285, § 1; Code 1285, § 2; and Ga. L. 1983, p. 3, § 38.

CHAPTER 9

VOCATIONAL REHABILITATION SERVICES

Sec.

49-9-1 through 49-9-42. [Repealed].

49-9-1 through 49-9-42.

Reserved. Repealed by Ga. L. 2000, p. 1137, § 12, effective July 1, 2001.

Editor's notes. — This chapter was based on Ga. L. 1951, p. 516, §§ 1, 3-15, 23; Ga. L. 1956, p. 52, §§ 1, 2; Ga. L. 1956, p. 373, § 1; Ga. L. 1957, p. 274, § 1; Ga. L. 1959, p. 343, §§ 1, 2; Ga. L. 1961, p. 400, § 1; Ga. L. 1964, p. 386, §§ 1-3; Ga. L. 1969, p. 944, § 1; Ga. L. 1971, p. 89, § 1; Ga. L. 1972, p. 1015, §§ 1212, 1216; Ga. L. 1978, p. 239, § 1; Ga. L. 1979, p. 132, § 5; Ga. L. 1982, p. 3, § 49; Ga. L. 1982, p. 833, §§ 1, 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 49; Ga. L. 1995, p. 1302, §§ 12, 14, 16.

CHAPTER 10

GEORGIA BOARD FOR PHYSICIAN WORKFORCE

Sec.		Sec.	
49-10-1.	Board for physician workforce; composition; expense allowances; staffing; advisory committees.	49-10-4.	Power to make contracts; authority to adopt rules and regulations.
49-10-2.	Purpose.	49-10-5 and 49-10-6	[Repealed].
49-10-3.	Powers, duties, and responsibilities.		

Editor's notes. — Ga. L. 1998, p. 616, effective July 1, 1998, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 49-10-1 through 49-10-6, relating to the Joint Board of Family Practice, and was based on Ga. L. 1976, p. 1096, §§ 1 - 6, Ga. L. 1978, p. 923, §§ 1 - 3, Ga. L. 1979, p. 642, § 1, Ga. L. 1980, p. 571, § 1, Ga. L. 1982, p. 3, § 49, Ga. L. 1984, p. 365, § 1, Ga. L. 1990, p. 1320, §§ 2 - 3.

Cross references. — Georgia Volunteers in Medicine Health Care Act, § 43-34-41.

Administrative rules and regulations. — General internal medicine student preceptorships, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Board for Physician Workforce, Chapter 195-8.

Georgia Board for Physician Workforce, Official Compilation of the Rules and Regulations of the State of Georgia, Title 195.

49-10-1. Board for physician workforce; composition; expense allowances; staffing; advisory committees.

(a)(1) The Joint Board of Family Practice which existed on January 1, 1998, is continued in existence but on and after July 1, 1998, shall become and be known as the Georgia Board for Physician Workforce. The Georgia Board for Physician Workforce, referred to in this chapter as the "board," shall be attached to the Department of Community Health for administrative purposes only, as defined by Code Section 50-4-3, except that such department shall prepare and submit the budget for that board in concurrence with that board.

(2) The Georgia Board for Physician Workforce shall be composed of 15 members, all of whom are residents of this state, as follows:

(A) Five members shall be primary care physicians;

(B) Five members shall be physicians who are not primary care physicians;

(C) Three members shall be representatives of hospitals which are not teaching hospitals, with at least one of those three members being a representative of a rural, nonprofit hospital;

(D) One member shall be a representative from the business community;

(E) One member shall have no connection with the practice of medicine or the provision of health care; and

(F) The physicians on the board shall represent a diversity of medical disciplines, including, but not limited to, women's health, geriatrics, and children's health. The board shall represent the gender, racial, and geographical diversity of the state.

(3) All members of the board shall be appointed by the Governor and confirmed by the Senate. The terms of office of all the members of the Joint Board of Family Practice shall expire July 1, 1998, but only at such time on or after that date when all 15 of the initial members of the Georgia Board of Physician Workforce have been appointed and qualified. No such initial member shall exercise any power under this chapter until all 15 members have been appointed and qualified. The initial members of the board who are appointed thereto shall take office for initial terms of office as follows:

(A) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to two-year terms of office;

(B) Two primary care physicians, two physicians who are not primary care physicians, and one representative of a hospital which is not a teaching hospital shall be appointed to four-year terms of office; and

(C) The remainder of the board shall be appointed to six-year terms of office.

Thereafter, successors to such members shall be appointed for terms of six years. The Governor shall designate the term to which each initial member is appointed. All members shall serve until their successors are appointed and qualified. Members appointed under this paragraph shall be eligible to serve on the board until confirmed by the Senate at the session of the General Assembly next following their appointment.

(4) In case of a vacancy on the board by reason of death or resignation of a member or for any other cause other than the expiration of the member's term of office, the board shall by secret ballot elect a temporary successor. If the General Assembly is in session, the temporary successor shall serve until the end of that session. If the General Assembly is not in session, the temporary successor shall serve until the end of the session next following the vacancy or until the expiration of the vacated member's term of office, whichever occurs first. The Governor shall appoint a permanent successor who shall be confirmed by the Senate. The permanent successor shall take office on the first day after the

General Assembly adjourns and shall serve for the unexpired term and until his or her successor is appointed and qualified.

(5) The office on the board of a member thereof who fails to attend more than three consecutive regular meetings of the board, without excuse approved by resolution of the board, shall become vacant.

(b) The board shall annually elect from its membership a chair, a vice chair, and a secretary-treasurer by ballot. Meetings shall be held at the call of the chair or upon written request of a majority of the members. A majority of members then in office shall constitute a quorum and shall have the authority to act upon any matter properly brought before the board. The board shall keep permanent minutes and records of all its proceedings and actions.

(c) Each member of the board shall receive the same expense allowance per day as that received by a member of the General Assembly for each day or substantial portion thereof that such member of the board is engaged in the work of the board, in addition to such reimbursement for travel and other expenses as is normally allowed to state employees. No member of the board shall receive the above per diem for more than 30 days in any one calendar year.

(d) The Department of Community Health, with the concurrence of the board, shall have the authority to employ such administrative staff as is necessary to carry out the functions of the board. Such staff members shall be employed within the limits of the appropriations made to the board.

(e) The board, as it deems appropriate, shall have the authority to appoint advisory committees to advise the board on the fulfillment of its duties. The members of the advisory committees shall not receive any per diem or reimbursements; provided, however, that such members shall receive the mileage allowance provided for in Code Section 50-19-7 for the use of a personal car in connection with attendance at meetings called by the board. (Code 1981, § 49-10-1, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 1999, p. 296, § 21; Ga. L. 2000, p. 1421, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “vice chair” was substituted for “vice-chair” in the first sentence of subsection (b).

Pursuant to Code Section 28-9-5, in 2000, “Department of Community Health” was substituted for “Department of Community health” in subsection (d).

49-10-2. Purpose.

The purpose of the board shall be to address the physician workforce needs of Georgia communities through the support and development of medical education programs. (Code 1981, § 49-10-2, enacted by Ga. L. 1998, p. 616, § 1.)

Cross references. — Reimbursement of expenses for state employees generally, § 45-7-20 et seq. Medical Ass’n, 244 Ga. 151, 259 S.E.2d 85 (1979), as to unconstitutional delegation of legislative authority to a private organization, see 29 Emory L.J. 1183 (1980).

Law reviews. — For comment on *Rogers v.*

49-10-3. Powers, duties, and responsibilities.

The board shall have the following powers, duties, and responsibilities:

- (1) To locate and determine specific underserved areas of the state in which unmet priority needs exist for physicians by monitoring and evaluating the supply and distribution of physicians by specialty and geographical location;
- (2) To approve and allocate state appropriations for family practice training programs, including but not limited to fellowships in geriatrics and other areas of need as may be identified by the board;
- (3) To approve and allocate state appropriations for designated pediatric training programs;
- (4) To approve and allocate any other state funds appropriated to the Georgia Board for Physician Workforce to carry out its purposes;
- (5) To coordinate and conduct with other state, federal, and private entities, as appropriate, activities to increase the number of graduating physicians who remain in Georgia to practice with an emphasis on medically underserved areas of the state;
- (6) To apply for grants and to solicit and accept donations, gifts, and contributions from any source for the purposes of studying or engaging one or more contractors to study issues relevant to medical education or implementing initiatives designed to enhance the medical education infrastructure of this state and to meet the physician workforce needs of Georgia communities; and
- (7) To carry out any other functions assigned to the board by general law. (Code 1981, § 49-10-3, enacted by Ga. L. 1998, p. 616, § 1; Ga. L. 2009, p. 77, § 1/HB 49.)

The 2009 amendment, effective July 1, 2009, deleted “and” at the end of paragraph (5), added paragraph (6), and redesignated former paragraph (6) as paragraph (7).

49-10-4. Power to make contracts; authority to adopt rules and regulations.

The board shall have the power to contract with other state and federal agencies, persons, corporations, associations, institutions, and authorities in carrying out its responsibilities. In addition, the board shall have the authority to adopt reasonable rules and regulations to carry out those responsibilities. (Code 1981, § 49-10-4, enacted by Ga. L. 1998, p. 616, § 1.)

49-10-5 and 49-10-6.

Repealed by Ga. L. 1998, p. 616, § 1, effective July 1, 1998.

Editor's notes. — For information as to the repeal of these Code sections, see the Editor's note at the beginning of the chapter.

TITLE 50

STATE GOVERNMENT

- Chap. 1. General Provisions, 50-1-1 through 50-1-8.
2. Boundaries and Jurisdiction of the State, 50-2-1 through 50-2-28.
3. State Flag, Seal, and Other Symbols, 50-3-1 through 50-3-100.
4. Organization of Executive Branch Generally, 50-4-1 through 50-4-7.
5. Department of Administrative Services, 50-5-1 through 50-5-202.
- 5A. Office of Treasury and Fiscal Services, 50-5A-1 through 50-5A-11.
- 5B. State Accounting Office, 50-5B-1 through 50-5B-5.
6. Department of Audits and Accounts, 50-6-1 through 50-6-32.
7. Department of Economic Development, 50-7-1 through 50-7-80.
8. Department of Community Affairs, 50-8-1 through 50-8-222.
9. Georgia Building Authority, 50-9-1 through 50-9-111.
10. Georgia Development Authority, 50-10-1 through 50-10-10.
11. State Law Library, 50-11-1 through 50-11-10 [Repealed].
12. Commissions and Other Agencies, 50-12-1 through 50-12-147.
13. Administrative Procedure, 50-13-1 through 50-13-44.
14. Open and Public Meetings, 50-14-1 through 50-14-6.
15. Public Lawsuits, 50-15-1 through 50-15-4.
16. Public Property, 50-16-1 through 50-16-183.
17. State Debt, Investment, and Depositories, 50-17-1 through 50-17-105.
18. State Printing and Documents, 50-18-1 through 50-18-135.
19. Transportation Services, 50-19-1 through 50-19-26.
20. Relations With Nonprofit Contractors, 50-20-1 through 50-20-8.
21. Waiver of Sovereign Immunity as to Actions Ex Contractu; State Tort Claims, 50-21-1 through 50-21-37.

22. Managerial Control Over Acquisition of Professional Services, 50-22-1 through 50-22-9.
23. Environmental Facilities Authority, 50-23-1 through 50-23-35.
24. Drug-free Workplace, 50-24-1 through 50-24-6.
25. Georgia Technology Authority, 50-25-1 through 50-25-16.
26. Housing and Finance Authority, 50-26-1 through 50-26-22.
27. Lottery for Education, 50-27-1 through 50-27-55.
28. State Productivity Council, 50-28-1 through 50-28-5 [Repealed].
29. Information Technology, 50-29-1 through 50-29-12.
30. Institute for Community Business Development, 50-30-1 through 50-30-6 [Repealed].
31. Georgia Suggestion System, 50-31-1 through 50-31-7 [Repealed].
32. Georgia Regional Transportation Authority, 50-32-1 through 50-32-71.
33. Year 2000 Readiness, 50-33-1 through 50-33-6 [Repealed].
34. OneGeorgia Authority, 50-34-1 through 50-34-18.
35. Georgia Environmental Training and Education Authority, 50-35-1 through 50-35-13 [Repealed].
36. Verification of Lawful Presence Within United States, 50-36-1.

Cross references. — Institution and prosecution of criminal proceedings involving property of Department of Transportation, § 32-1-4 et seq. Transportation of trash,

refuse, and garbage across state boundaries for dumping without permission, § 36-1-16. Competition for public work bids, Ch. 84, T. 36.

CHAPTER 1

GENERAL PROVISIONS

Sec.		Sec.	
50-1-1.	Agency mailing lists; updating; restriction on mailing materials to officials no longer in office.	50-1-6.	Credit card payments on amounts due state and local governments.
50-1-2.	Privileges and exemptions accorded the Taipei Economic and Cultural Representatives Office.	50-1-7.	General Assembly findings; state authorized to administer programs.
50-1-3.	Poet laureate.	50-1-8.	Election to contractually provide to unmarried persons benefits, rights, or privileges provided to married persons.
50-1-4.	Employment position to remain open upon granting of involuntary separation benefits by state agency.		
50-1-5.	Meetings by teleconference or other similar means.		

50-1-1. Agency mailing lists; updating; restriction on mailing materials to officials no longer in office.

(a) For the purpose of this Code section, the term “state agency” means a department, agency, board, commission, or authority of state government.

(b) Each state agency is required to update annually all mailing lists of the agency.

(c) No state agency shall mail publications or materials to a previously elected state officer who is no longer in office except upon written request. (Ga. L. 1980, p. 526, § 1.)

50-1-2. Privileges and exemptions accorded the Taipei Economic and Cultural Representatives Office.

The Taipei Economic and Cultural Representatives Office in the United States, while it maintains an office in the State of Georgia, shall be accorded the same privileges and exemptions concerning taxation, the operation of motor vehicles, education, immunity, and any other privileges and exemptions as provided by the Taiwan Relations Act, 22 U.S.C. Section 3301, et seq. (Ga. L. 1980, p. 46; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 334, § 30-1/HB 501.)

50-1-3. Poet laureate.

(a) There is created the position of poet laureate of the State of Georgia.

(b) The poet laureate shall be appointed by the Governor from a list of three nominees submitted to him by the Georgia Council for the Arts.

(c) The council shall submit the list of three nominees to the Governor within 30 days after the Governor takes the oath of office for a full term. The Governor shall appoint the poet laureate within 30 days after receiving the list of nominees. The poet laureate shall be appointed to serve for a term of office concurrent with the term of office of the Governor or until a successor is appointed and qualified as provided in this Code section.

(d) In the event of a vacancy in the office of poet laureate, the vacancy shall be filled in the same manner as the original appointment, and the person so appointed shall serve until a successor is appointed and qualified as provided in this Code section.

(e) Any person serving on April 13, 1981, in the position of poet laureate as created by executive order shall continue in the position and no appointment shall be effective under this Code section until such time as the person serving as poet laureate on April 13, 1981, either vacates the office or a vacancy occurs in the office in any other manner.

(f) The poet laureate shall be an honorary position and the person appointed shall receive no remuneration. (Ga. L. 1981, p. 1394, § 1; Ga. L. 1986, p. 174, § 1.)

50-1-4. Employment position to remain open upon granting of involuntary separation benefits by state agency.

(a) As used in this Code section, the term “state agency” means any department, agency, board, commission, or authority of the state or any political subdivision thereof, any employees of which are members of the Employees’ Retirement System of Georgia.

(b) Any time a state employee entitled to receive involuntary separation retirement benefits pursuant to Code Section 47-2-123 is involuntarily separated from employment and such employee is granted such involuntary separation benefits, the employment position such employee held within a state agency at the time of such involuntary separation from service shall remain open and unfilled permanently. In addition, an amount equal to the sum of such employee’s salary at the time of such involuntary separation from service and the cost of such employee’s retirement with involuntary separation benefits shall be deleted permanently from the employing state agency’s annual appropriations budget.

(c) The provisions of this Code section shall not apply to an employee who is involuntarily separated from service because of a mandatory retirement age or as a direct result of an Act of the General Assembly which abolishes such employee’s position. (Code 1981, § 50-1-4, enacted by Ga. L. 1993, p. 1817, § 1.)

50-1-5. Meetings by teleconference or other similar means.

(a) Unless specifically prohibited by the laws relating to a particular board, body, or committee, any board, body, or committee of state

government may meet by teleconference or other similar means. The methods of meeting permitted under this Code section shall include telephone conference calls, meetings held through two-way interactive closed circuit television or satellite television signal, or any other similar method which allows each member of the board or body participating in the meeting to hear and speak to each other member participating in the meeting.

(b) Nothing in this Code section shall eliminate any otherwise applicable requirement for giving notice of any meeting. Likewise, nothing in this Code section shall create a requirement for giving notice of any meeting where it does not otherwise exist. The notice shall list each location where any member of the board, body, or committee plans to participate in the meeting if the meeting is otherwise open to the public; provided, however, it shall not be grounds to contest any actions of the board, body, or committee as provided in Code Section 50-14-1 if a member participates from a location other than the location listed in the notice. At a minimum, the notice shall list one specific location where the public can participate in the meeting if the meeting is otherwise open to the public. The notice shall further conform with the provisions of "due notice" as provided in Code Section 50-14-1. Any meeting which is otherwise required by law to be open to the public shall be open to the public at each location listed in the notice or where any member of the board, body, or committee participates in the meeting.

(c) The provisions of this Code section shall be broadly construed to cover any board, body, or committee of state government which is required or authorized to hold any meeting concerning state government affairs, regardless of the name by which any such entity may be known. The provisions of this Code section are specifically made applicable to the legislative and judicial branches of state government as well as the executive branch. With respect to the judicial branch, however, this Code section shall not apply to actual court sessions but shall apply to other administrative or judicial proceedings in the judicial branch. With respect to the legislative branch, this Code section shall not apply to actual sessions of the Senate or the House of Representatives but shall apply to committee meetings and other administrative proceedings. (Code 1981, § 50-1-5, enacted by Ga. L. 1996, p. 1300, § 1.)

50-1-6. Credit card payments on amounts due state and local governments.

(a) Notwithstanding any other provision of general or local law to the contrary, any officer or unit of state or local government who or which is required or authorized to receive or collect any payments to state or local government is authorized but not required to accept credit card payment of such amounts.

(b) This Code section shall be broadly construed to authorize but not require acceptance of credit card payments by:

(1) All departments, agencies, boards, bureaus, commissions, authorities, and other units of state government, by whatever name called;

(2) All officers, officials, employees, and agents of the state and such units of state government, by whatever name called;

(3) All political subdivisions of the state, including counties, municipalities, school districts, and local authorities;

(4) All departments, agencies, boards, bureaus, commissions, authorities, and other units of such political subdivisions, by whatever name called; and

(5) All officers, officials, employees, and agents of such units of political subdivisions.

(c) This Code section shall be broadly construed to authorize but not require acceptance of credit card payments of all types of amounts payable, including but not limited to taxes, license and registration fees, fines, and penalties. For purposes of this Code section, the term "credit card" shall be deemed to include credit cards, charge cards, and debit cards.

(d) The decision as to whether to accept credit card payments for any particular type of payment shall be made by the officer or board or other body having general discretionary authority over the manner of acceptance of such type of payments. If credit card payments are to be accepted, such officer or board or other body shall be authorized to adopt reasonable policies, rules, or regulations not in conflict with this Code section governing the manner of acceptance of credit card payments. However, no credit card payments shall be accepted for local ad valorem taxes without the formal agreement of the governing authority of the political subdivision for whose benefit such taxes are collected, and no credit card payments shall be accepted for any state taxes or fees without formal approval by the State Depository Board. The officer or board or other body having the general discretionary authority over the manner of acceptance of such payments shall be authorized to enter into appropriate agreements with credit card issuers or other appropriate parties as needed to facilitate the acceptance of credit card payments. Without limiting the generality of the foregoing, such agreements may provide for the acceptance of credit card payments at a discount from their face amount or the payment or withholding of administrative fees from the face amount of such payments. Such discount or administrative fees may be authorized when the officer or board or other body determines that any reduction of revenue resulting from such discount or fees will be in the best interest of state or local government. Factors which may be considered in making such a determination may include but are not necessarily limited to improved governmental cash flow, reduction of governmental overhead, improved governmental financial security, or a combination of one or more of the foregoing together with the benefit of increased public convenience. Any such

agreement shall provide that it may be canceled at any time by the affected officer or unit of state or local government, but the agreement may include provisions for a reasonable brief period of notice for cancellation.

(e) An officer or board or other body authorizing acceptance of credit card payments shall be authorized but not required to impose a surcharge upon the person making a payment by credit card so as to wholly or partially offset the amount of any discount or administrative fees charged to state or local government. The surcharge will be applied only when allowed by the operating rules and regulations of the credit card involved. When a party elects to make a payment to state or local government by credit card and such a surcharge is imposed, the payment of such surcharge shall be deemed voluntary by such party and shall be in no case refundable.

(f) No person making any payment by credit card to state or local government shall be relieved from liability for the underlying obligation except to the extent that state or local government realizes final payment of the underlying obligation in cash or the equivalent. If final payment is not made by the credit card issuer or other guarantor of payment in the credit card transaction, then the underlying obligation shall survive and state or local government shall retain all remedies for enforcement which would have applied if the credit card transaction had not occurred. No contract may modify the provisions of this subsection. This subsection, however, shall not make the underlying obligor liable for any discount or administrative fees paid to a credit card issuer or other party by state or local government.

(g) A state or local government officer or employee who accepts a credit card payment in accordance with this Code section and any applicable policies, rules, or regulations of state or local government shall not thereby incur any personal liability for the final collection of such payments. (Code 1981, § 50-1-6, enacted by Ga. L. 1996, p. 1509, § 1.)

Code Commission notes. — Ga. L. 1996, p. 1300, § 1 and Ga. L. 1996, p. 1509, § 1 both enacted a Code Section 50-1-5. Pursuant to Code Section 28-9-5, in 1996, the

Code Section 50-1-5 enacted by Ga. L. 1996, p. 1509, § 1 was redesignated as Code Section 50-1-6.

50-1-7. General Assembly findings; state authorized to administer programs.

(a) The General Assembly finds and determines that:

(1) Federal law now provides at 42 U.S.C.A. Section 604a, and may hereafter provide under other federal laws, that subject to certain limitations states may:

(A) Administer and provide services under certain federal programs through contracts with charitable, religious, or private organizations; and

(B) Provide beneficiaries of assistance under certain federal programs with certificates, vouchers, or other forms of disbursement which are redeemable with such organizations

but that such authority shall not preempt any provision of a state constitution or state statute that prohibits or restricts the expenditure of state funds in or by religious organizations;

(2) Article I, Section II, Paragraph VII of the Georgia Constitution provides that no money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect, cult, or religious denomination or of any sectarian institution;

(3) Article III, Section VI, Paragraph II(a)(3) of the Georgia Constitution provides that the General Assembly may provide by law for participation by the state and political subdivisions and instrumentalities of the state in federal programs and the compliance with laws relating thereto;

(4) Article III, Section IX, Paragraph II(c) of the Georgia Constitution provides that the General Assembly shall by general law provide for the regulation and management of the finance and fiscal administration of the state; and

(5) The provisions of this Code section are authorized under a reasonable construction of such provisions of federal law and the Georgia Constitution.

(b) To the extent authorized and contemplated by federal law, the State of Georgia and its departments, agencies, instrumentalities, and political subdivisions may, in the course of participation in federal programs, administer programs and provide assistance in the manner contemplated by 42 U.S.C.A. Section 604a, and any other similar federal law, subject to the following conditions:

(1) State and local government funds may be expended for administrative purposes incidental to the administration of such programs but neither state funds nor local government funds shall be distributed to any church, sect, cult, religious denomination, or sectarian institution, except as otherwise authorized by law or the Constitution of the State of Georgia;

(2) If an individual objects to the religious character of an organization from which the individual receives, or would receive, program assistance or services, an alternative acceptable provider shall be made available to such individual;

(3) A religious organization providing program assistance or services shall not discriminate against an individual in rendering program assistance or services on the basis of religion, religious belief, or participation in or refusal to participate in a religious practice or rite;

(4) No funds provided to a religious organization to provide program assistance or services shall be expended for sectarian worship, instruction, proselytization, or promotion of any particular system of faith or worship; and

(5) Organizations receiving funds to provide program assistance or services shall either be organized under Section 501(c)(3) of the United States Internal Revenue Code or shall agree to be subject to audit of the use of state and local funds pursuant to appropriate rules and regulations promulgated by the Department of Audits and Accounts for the administration of the terms of this Code section. (Code 1981, § 50-1-7, enacted by Ga. L. 2002, p. 1147, § 1.)

Law reviews. — For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 335 (2002).

50-1-8. Election to contractually provide to unmarried persons benefits, rights, or privileges provided to married persons.

(a) It is the policy of this state that any organization or person in this state may elect to, or elect not to, contractually provide to unmarried persons one or more benefits, rights, or privileges in the same manner that such organization or person contractually provides benefits, rights, or privileges to married persons.

(b) State and local government shall not impose any penalty on or withhold any benefits, rights, or privileges from any organization or person on the basis of such organization's or person's election to or election not to contractually or otherwise provide to unmarried persons one or more benefits, rights, or privileges in the same manner that such organization or person contractually or otherwise provides benefits, rights, or privileges to married persons.

(c) Subsection (b) of this Code section shall apply to the state and any political subdivision of the state and to any department, agency, authority, commission, or other entity of the state or any political subdivision of the state.

(d) As used in this Code section, the term "organization" includes but is not limited to any corporation, association, nonprofit organization, limited liability company, partnership, group, authority, or other entity, including any political subdivision of this state. (Code 1981, § 50-1-8, enacted by Ga. L. 2005, p. 452, § 1/HB 67.)

Law reviews. — For article on 2005 enactment of this Code section, see 22 Ga. St. U.L. Rev. 205 (2005).

CHAPTER 2

BOUNDARIES AND JURISDICTION OF THE STATE

Article 1		Sec.	
State Boundaries			
Sec.			lands within state; application to Governor; procedure for effecting cession.
50-2-1.	Boundaries of the state generally.	50-2-23.2.	Concurrent jurisdiction over lands of the National Infantry Museum; limits to concurrent jurisdiction; cession of concurrent jurisdiction; state laws and regulations not preempted.
50-2-2.	Boundary between Georgia and South Carolina.		
50-2-3.	Boundary between Georgia and North Carolina and Tennessee.		
50-2-4.	Boundary between Georgia and Alabama.	50-2-24.	Vesting of jurisdiction; exemption from state, county, or municipal charges.
50-2-5.	Boundary between Georgia and Florida.		
Article 2		50-2-25.	State consent to acquisition by United States of lands for forest and wildlife purposes; concurrent jurisdiction.
Jurisdiction		50-2-26.	Reacquisition of jurisdiction over state maintained highways in ceded territory.
50-2-20.	Extent of sovereignty and jurisdiction generally.	50-2-27.	Retrocession of jurisdiction over lands owned by the United States.
50-2-21.	Jurisdiction extends to all persons within state limits; court's option to decline jurisdiction.	50-2-28.	Capitol Square designated; state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds to City of Atlanta for traffic movement.
50-2-22.	State consent to acquisition by United States of lands for government purposes.		
50-2-23.	Exclusive jurisdiction ceded over lands acquired by United States; exceptions.		
50-2-23.1.	Cession of concurrent jurisdiction to United States over certain		

Cross references. — Boundaries of Georgia counties bordering on stream which constitutes state boundary, § 36-1-2.

ARTICLE 1

STATE BOUNDARIES

Cross references. — Conducting of surveys for determination of land boundaries generally, Ch. 4, T. 44.

50-2-1. Boundaries of the state generally.

The boundaries of Georgia, as deduced from the Constitution of Georgia, the Convention of Beaufort, the Articles of Cession and Agree-

ment with the United States of America entered into on April 24, 1802, the Resolution of the General Assembly dated December 8, 1826, and the adjudications and compromises affecting Alabama, Florida, and South Carolina are as follows:

From the sea, at the point where the northern edge of the navigable channel of the River Savannah intersects a point three geographical miles east of the ordinary low water mark, generally along the northern edge of the navigable channel up the River Savannah, along the northern edge of the sediment basin to the Tidegate, thence along the stream thereof to the fork or confluence made by the Rivers Keowee and Tugalo, and thence along said River Tugalo until the fork or confluence made by said Tugalo and the River Chattooga, and up and along the same to the point where it touches the northern boundary line of South Carolina, and the southern boundary line of North Carolina, which is at a point on the thirty-fifth parallel of north latitude, reserving all the islands in said Rivers Savannah, Tugalo, and Chattooga, except for the Barnwell Islands and Oyster Bed Island in the Savannah, to Georgia; thence on said line west, to a point where it merges into and becomes the northern boundary line of Alabama — it being the point fixed by the survey of the State of Georgia, and known as Nickajack; thence in a direct line to the great bend of the Chattahoochee River, called Miller's Bend — it being the line run and marked by said survey; and thence along and down the western bank of said Chattahoochee River, along the line or limit of high-water mark, to its junction with the Flint River; thence along a certain line of survey made by Gustavus J. Orr, a surveyor on the part of Georgia, and W. Whitner, a surveyor on the part of Florida, beginning at a fore-and-aft tree about four chains below the junction; thence along this line east, to a point designated 37 links north of Ellicott's Mound on the St. Marys River; thence along the middle of said river to the Atlantic Ocean, and extending therein three geographical miles from ordinary low water along those portions of the coast and coastal islands in direct contact with the open sea or three geographical miles from the line marking the seaward limit of inland waters; thence running in a northerly direction and following the direction of the Atlantic Coast to the point where the northern edge of the navigable channel of the River Savannah intersects a point three geographical miles east of the ordinary low water mark, the place of beginning; including all the lands, waters, islands, and jurisdictional rights within said limits; and also all the islands within three geographical miles of the seacoast. (Laws 1788, Cobb's 1851 Digest, p. 150; Code 1863, § 17; Code 1868, § 15; Code 1873, § 15; Code 1882, § 15; Civil Code 1895, § 16; Civil Code 1910, § 16; Ga. L. 1916, p. 29, § 1; Code 1933, § 15-101; Ga. L. 1969, p. 678, § 1; Ga. L. 1994, p. 824, § 1.)

JUDICIAL DECISIONS

Grants made previous to settlement of boundary dispute between two states are void if those grants conflict with such settlement. *Coffee v. Groover*, 123 U.S. 1, 8 S. Ct. 1, 31 L. Ed. 51 (1887).

General rule where river is boundary. — The general rule is that where a river is the boundary between two states, if the original property is in neither, and there is no convention respecting it, each state holds to the middle of the stream. *Georgia Ry. & Power v. Wright*, 146 Ga. 29, 90 S.E. 465 (1916).

Jurisdiction of state extends over river. — That part of the Savannah River which is broken by islands, located between an island and the Georgia mainland, is within the jurisdiction and sovereignty of this state by virtue of this section, and a dam constructed across the river from an island to the Georgia shore is subject to taxation in this state. *Georgia Ry. & Power v. Wright*, 146 Ga. 29, 90 S.E. 465 (1916).

Coastal boundaries. — The salt waters of this state extend from the mean low watermark of the foreshore three geographical miles offshore; except where a low tide elevation is situated within three nautical miles seaward of the low water line along the coast, the state's three mile boundary is measured from such low tide elevation. *Department of Natural Resources v. Joyner*, 241 Ga. 390, 245 S.E.2d 644 (1978).

Requirements for baselines. — Baselines shall not be drawn to and from low tide elevations unless lighthouses or similar permanently visible installations above sea level are built upon them. *Department of Natural Resources v. Joyner*, 143 Ga. App. 868, 240 S.E.2d 114 (1977), rev'd on other grounds, 241 Ga. 390, 245 S.E.2d 644 (1978).

Normal baseline for measuring territorial sea is low water line. *Department of Natural Resources v. Joyner*, 143 Ga. App. 868, 240

S.E.2d 114 (1977), rev'd on other grounds, 241 Ga. 390, 245 S.E.2d 644 (1978).

State should be named in petition and served notice. — Whichever line is correct, low tide or high tide, as the dividing line between private property sought to be registered and the state's property, the state is still an adjoining landowner and should have been so named in the petition and served other than by the advertisement "to whom it may concern," and a land registration judgment, if granted, would not be binding upon an adjoining landowner who was not named and served. *State v. Bruce*, 231 Ga. 783, 204 S.E.2d 106 (1974).

South Carolina sovereignty over Barnwell Islands. — Islands that emerged in the Savannah River after the 1787 Treaty of Beaufort do not affect the boundary line between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

South Carolina established sovereignty over the Barnwell Islands in the Savannah River by prescription and acquiescence, where there was a record of almost-uniform taxation of property on the islands by South Carolina authorities, policing and prosecutorial activities by South Carolina authorities, and patrolling by South Carolina wildlife officers. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Lateral seaward boundary between Georgia and South Carolina. — Tybee Island is to be regarded as the "headland" for the south side of the mouth of the Savannah River, and the long-existing shoal forms the north side of the mouth in determining the lateral seaward boundary between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Cited in *United States v. Louisiana*, 363 U.S. 1, 80 S. Ct. 961, 4 L. Ed. 2d 1025 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Phrase added to clarify treatment of coastal islands. — The addition of the phrase "and coastal islands," in this section does not render the Georgia law inconsistent with the Submerged Lands Act, but appears to be simply an attempt to clarify one ques-

tion left unanswered by the Submerged Lands Act, but answered by the Supreme Court in *United States v. California*, 381 U.S. 139, 85 S. Ct. 1401, 14 L. Ed. 2d 296 (1965), that is, how are coastal islands to be treated in determining the seaward boundary. 1976

Op. Att'y Gen. No. 76-95 (see O.C.G.A. 50-2-1).

Determining boundary of state's tidal or salt waters. — The seaward boundary of Georgia's tidal or salt waters should be determined using the rules set forth in the Convention on the Territorial Sea and Contiguous Zone. 1976 Op. Att'y Gen. No. 76-95.

Boundary between Georgia and Alabama along Chattahoochee River is west bank of that river. 1962 Op. Att'y Gen. p. 26.

Boundaries of state's property vary with

considerations of state's position. — If the state is classed with all of the other owners of tidewater land, the boundaries of the state's property clearly extend to the low-water mark or encompass generally the entire tidewater bed; on the other hand, when the state's unique position as local political sovereign is taken into consideration, the state's rights of ownership extend far beyond this point for an additional three miles out to sea. 1965-66 Op. Att'y Gen. No. 66-49.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 28 et seq.

C.J.S. — 81A C.J.S., States, §§ 12, 16 et seq.

50-2-2. Boundary between Georgia and South Carolina.

The boundary between Georgia and South Carolina shall be the line described as running from the mouth of the River Savannah, up said river and the Rivers Tugalo and Chattooga, to the point where the last-named river intersects with the thirty-fifth parallel of north latitude, conforming as much as possible to the line agreed on by the commissioners of said states at Beaufort on April 28, 1787, except for the Barnwell Islands and the Oyster Bed Island in the River Savannah; provided, however, that the boundary along the lower reaches of the Savannah River, and the lateral seaward boundary, shall be more particularly described as being:

BEGINNING at a point 32 degrees 07 minutes 00 seconds North Latitude and 81 degrees 07 minutes 00 seconds West Longitude, located in the Savannah River, and proceeding in a southeasterly direction down the thread of the Savannah River equidistant between the banks of the River on Hutchinson Island and on the mainland of South Carolina, including the small downstream island southeast of the aforesaid point, at ordinary stage, until reaching the vicinity of Pennyworth Island;

Proceeding thence easterly down the thread of the northernmost channel of the Savannah River as it flows north of Pennyworth Island, making the transition to the said northernmost channel using the triequidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank, thence to the thread of the said northernmost channel equidistant from the South Carolina mainland bank and Pennyworth Island at ordinary stage, around Pennyworth Island;

Proceeding thence southeasterly to the thread of the northern channel of the Savannah River equidistant from the Georgia bank on Hutchinson Island and the South Carolina mainland bank, making the transition

utilizing the triequidistant method between Pennyworth Island, the Georgia bank on Hutchinson Island, and the South Carolina mainland bank;

Proceeding thence southeasterly down the thread of the Savannah River equidistant from the Hutchinson Island and South Carolina mainland banks of the river at ordinary stage, through the tide gates, until intersecting the northwestern (farthest upstream) boundary of the "Back River Sediment Basin," as defined in the "Annual Survey — 1992, Savannah Harbor, Georgia, U.S. Coastal Highway, No. 17 to the Sea," U.S. Army Corps of Engineers, Savannah District, as amended by the Examination Survey — 1992 charts for the Savannah Harbor Deepening Project, Drawings No. DSH 112/107, (hereinafter the "Channel Chart");

Proceeding thence along the said northwestern boundary to its intersection with the northern boundary of the Back River Sediment Basin, in a generally southeasterly direction until said boundary intersects the northern boundary of the main navigational channel as depicted on the Channel Chart at the point designated as SR-34 (Georgia State Grid, East Zone, 1927 NAD, coordinates $x=849479.546$, $y=759601.757$);

Proceeding thence toward the mouth of the Savannah River along the northern boundary of the main navigational channel at the new channel limit as depicted on the Channel Chart, via Oglethorpe Range through point SR-33 (coordinates $x=853126.849$, $y=761229.575$), Fort Jackson Range through point SR-32 (coordinates $x=854568.183$, $y=762555.255$), the Bight Channel through points SR-31 (coordinates $x=855854.367$, $y=765145.946$), SR-30 (coordinates $x=857363.583$, $y=766237.604$), SR-29 (coordinates $x=858471.561$, $y=766530.527$), SR-28 (coordinates $x=859881.928$, $y=766491.887$), and SR-27 (coordinates $x=861359.826$, $y=765804.794$), Upper Flats Range through point SR-26 (coordinates $x=863655.959$, $y=763821.629$), Lower Flats Range through points SR-25 (coordinates $x=865361.347$, $y=759910.744$), SR-24 (coordinates $x=866413.099$, $y=758260.171$), SR-23 (coordinates $x=867339.230$, $y=757647.194$), SR-22 (coordinates $x=870024.011$, $y=756511.390$), and SR-21 (coordinates $x=873855.646$, $y=755906.677$), Crossing Range through points SR-20 (coordinates $x=875581.821$, $y=754992.833$), and SR-19 (coordinates $x=884667.253$, $y=744780.789$) and New Channel Range around the Rehandling Basin, and along the northern boundary of the Oyster Bed Island Turning Basin through point SR-16 (coordinates $x=894907.977$, $y=742529.752$), to the easternmost end of Oyster Bed Island at Navigational Buoy R "24";

Proceeding thence from Navigational Buoy R "24" easterly along the mean low water line of Oyster Bed Island to the point at which the mean low water line of Oyster Bed Island intersects the Oyster Bed Island Training Wall;

Proceeding thence along the southern edge of the Oyster Bed Island Training Wall until reaching the Jones Island Range line;

Proceeding thence southeasterly along the Jones Island Range line until reaching the northern boundary of the main navigational channel as depicted on the Channel Chart;

Proceeding thence southeasterly along the northern boundary of the main navigational channel as depicted on the Channel Chart to Navigational Buoy R "6," via Jones Island Range and Bloody Point Range; and finally

Proceeding thence in an easterly direction from Navigational Buoy R "6" in a straight line forming the seaward lateral boundary line to the seaward limit of Georgia as now or hereafter fixed by the Congress of the United States, said boundary line bearing approximately 104 degrees from magnetic north, the bearing of said line being more particularly described as being at right angles to the baseline from the southernmost point of Hilton Head Island and the northernmost point of Tybee Island, drawn by the Baseline Committee in 1970.

Provided, however, that the boundary shall be as more particularly shown by reference to the United States Department of Commerce, National Oceanic and Atmospheric Administration (NOAA) GPS coordinates on a map to be prepared by NOAA as a part of the survey commissioned by the States of Georgia and South Carolina in order to locate this boundary. In case of any conflict between the verbal description set forth hereinabove and the map locating the boundary with reference to GPS points, the location shown on the map shall prevail.

Provided, further, that nothing herein shall in any way be deemed to govern or affect in any way the division between the states of the remaining assimilative capacity, that is, the capacity to receive wastewater and other discharges without violating water quality standards, of the portion of the Savannah River described herein. (Orig. Code 1863, § 18; Code 1868, § 16; Code 1873, § 16; Code 1882, § 16; Civil Code 1895, § 17; Civil Code 1910, § 17; Code 1933, § 15-102; Ga. L. 1994, p. 824, § 2.)

JUDICIAL DECISIONS

Boundary line remains where originally established. — The boundary line between Georgia and South Carolina was not altered by the fact that the United States government, in the course of its work to improve the navigation of the Savannah River, changed the location of the main current or channel of the river; but the boundary remains where the main channel or current flowed naturally when the boundary line was originally fixed and established. *James v. State*, 10 Ga. App. 13, 72 S.E. 600 (1911).

Person determined within Georgia boundary. — A person in a boat on the Savannah

River, within 30 yards of the Georgia side, at a point where the river is at least 175 yards wide, is *prima facie* in Georgia. *Simpson v. State*, 92 Ga. 41, 17 S.E. 984, 44 Am. St. R. 75, 22 L.R.A. 248 (1893).

South Carolina sovereignty over Barnwell Islands. — Islands that emerged in the Savannah River after the 1787 Treaty of Beaufort do not affect the boundary line between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

South Carolina established sovereignty over the Barnwell Islands in the Savannah

River by prescription and acquiescence, since there was a record of almost-uniform taxation of property on the islands by South Carolina authorities, policing and prosecutorial activities by South Carolina authorities, and patrolling by South Carolina wildlife officers. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

Lateral seaward boundary between Geor-

gia and South Carolina. — Tybee Island is to be regarded as the “headland” for the south side of the mouth of the Savannah River, and the long-existing shoal forms the north side of the mouth, in determining the lateral seaward boundary between Georgia and South Carolina. *Georgia v. South Carolina*, 497 U.S. 376, 110 S. Ct. 2903, 111 L. Ed. 2d 309 (1990).

OPINIONS OF THE ATTORNEY GENERAL

Boundary between Georgia and South Carolina is midway between banks of north-

ern branch of Savannah River. 1954-56 Op. Att’y Gen. p. 625.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 28 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

50-2-3. Boundary between Georgia and North Carolina and Tennessee.

The boundary between Georgia and North Carolina and Georgia and Tennessee shall be the line described as the thirty-fifth parallel of north latitude, from the point of its intersection by the River Chattooga, west to the place called Nickajack. (Orig. Code 1863, § 19; Code 1868, § 17; Code 1873, § 17; Code 1882, § 17; Civil Code 1895, § 18; Civil Code 1910, § 18; Code 1933, § 15-103.)

Editor’s notes. — By resolution (Ga. L. 2008, p. 1180), the General Assembly stated its clear and express intent to correct, establish, survey, and proclaim the northern border of the State of Georgia and the southern border of the States of Tennessee and North Carolina at the true 35th parallel.

Law reviews. — For article discussing the disputes over Georgia’s northern boundary with North Carolina and Tennessee, see 8 Ga. St. B.J. 197 (1971).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 28 et seq.

C.J.S. — 81A C.J.S., States, § 12 et seq.

50-2-4. Boundary between Georgia and Alabama.

The boundary line between Georgia and Alabama shall be the line described from Nickajack to Miller’s Bend on the Chattahoochee River, and down said river to its junction with the Flint River. (Orig. Code 1863, § 20; Code 1868, § 18; Code 1873, § 18; Code 1882, § 18; Civil Code 1895, § 19; Civil Code 1910, § 19; Code 1933, § 15-104.)

OPINIONS OF THE ATTORNEY GENERAL

Boundary between Georgia and Alabama
 along Chattahoochee River is west bank of
 that river. 1962 Op. Att'y Gen. p. 26.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 28 et seq. **C.J.S.** — 81A C.J.S., States, § 12 et seq.

50-2-5. Boundary between Georgia and Florida.

The boundary line between Georgia and Florida shall be the line described from the junction of the Flint and Chattahoochee Rivers to the point 37 links north of Ellicott's Mound, on the St. Marys River; thence down said river to the Atlantic Ocean; thence along the middle of the presently existing St. Marys entrance navigational channel to the point of intersection with a hypothetical line connecting the seawardmost points of the jetties now protecting such channel; thence along said line to a control point of latitude 30° 42' 45.6" north, longitude 81° 24' 15.9" west; thence due east to the seaward limit of Georgia as now or hereafter fixed by the Congress of the United States; such boundary to be extended on the same true 90° bearing so far as a need for further delimitation may arise. (Ga. L. 1859, p. 23, § 1; Code 1863, § 21; Code 1868, § 19; Code 1873, § 19; Code 1882, § 19; Civil Code 1895, § 20; Civil Code 1910, § 20; Code 1933, § 15-105; Ga. L. 1969, p. 675, § 1.)

JUDICIAL DECISIONS

Cited in *Coffee v. Groover*, 123 U.S. 1, 8 S. Ct. 1, 31 L. Ed. 51 (1887).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 28 et seq. **C.J.S.** — 81A C.J.S., States, § 12 et seq.

ARTICLE 2

JURISDICTION

50-2-20. Extent of sovereignty and jurisdiction generally.

The sovereignty and jurisdiction of this state extend to all places within the limits of her boundaries except so far as she has voluntarily ceded her sovereignty and jurisdiction over particular localities to the United States or adjacent states. (Orig. Code 1863, § 22; Code 1868, § 20; Code 1873, § 20;

Code 1882, § 20; Civil Code 1895, § 21; Civil Code 1910, § 21; Code 1933, § 15-201.)

OPINIONS OF THE ATTORNEY GENERAL

O.C.G.A. § 50-2-2 contemplates cession of jurisdiction by legislature and not Governor. — This section does not contemplate the cession of jurisdiction to the United States by the Governor but instead contemplates that such cession shall be granted exclusively by the General Assembly. 1950-51 Op. Att’y Gen. p. 75.

Policing power. — Although reciprocal agreement is entered into, power of policing within boundaries of Georgia cannot be delegated to another state nor can the policing power of this state be extended outside the territory of Georgia. 1957 Op. Att’y Gen. p. 147.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 4, 5, 22 et seq., 34.

C.J.S. — 81A C.J.S., States, § 33 et seq.

50-2-21. Jurisdiction extends to all persons within state limits; court’s option to decline jurisdiction.

(a) The jurisdiction of this state and its laws extend to all persons while within its limits, whether as citizens, denizens, or temporary sojourners.

(b) A court of this state may decline to exercise jurisdiction of any civil cause of action of a nonresident accruing outside this state if there is another forum with jurisdiction of the parties in which the trial can be more appropriately held. In determining the appropriateness of this state or of another forum, the court shall take into account the following factors:

- (1) The place of accrual of the cause of action;
- (2) The location of witnesses;
- (3) The residence or residences of the parties;
- (4) Whether a litigant is attempting to circumvent the applicable statute of limitations of another state; and
- (5) The public factor of the convenience to and burden upon the court.

(c) Upon a motion filed not later than 90 days after the last day allowed for the filing of the moving party’s answer and upon the party’s showing that the existing forum constitutes an inconvenient forum based on the factors listed in subsection (b) of this Code section and where there is another forum which can assume jurisdiction, the court may dismiss the action without prejudice to its being filed in any appropriate jurisdiction on any condition or conditions that may be just. (Orig. Code 1863, § 23; Code 1868, § 21; Code 1873, § 21; Code 1882, § 21; Civil Code 1895, § 22; Civil Code 1910, § 22; Code 1933, § 15-202; Ga. L. 2003, p. 820, § 5.)

Cross references. — Rights of citizens of other states and aliens while in state, § 1-2-9 et seq. Grounds for exercising personal jurisdiction over nonresidents, § 9-10-91.

Editor's notes. — Ga. L. 2003, p. 820, § 9, not codified by the General Assembly, provides that this Act "shall apply to all civil actions filed on or after July 1, 2003."

Law reviews. — For article surveying developments in Georgia trial practice and procedure from mid-1980 through mid-1981, see 33 Mercer L. Rev. 275 (1981). For article, "Georgia's Domestic Relations Long-Arm Statute, Circa 1986," see 23 St B.J.

74 (1987). For annual survey of law of domestic relations, see 38 Mercer L. Rev. 179 (1986). For annual survey of trial practice and procedure, see 38 Mercer L. Rev. 383 (1986). For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004).

For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 28 (2003).

For comment on *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), see 26 Mercer L. Rev. 317 (1974).

JUDICIAL DECISIONS

Lack of jurisdiction. — A court has no jurisdiction over a case in which neither of the parties is, or has ever been in the state, or a citizen, or a resident of the state, or the owner of property in the state. *House v. House*, 25 Ga. 473 (1858).

Extent of jurisdiction. — All persons found within the limits of a government are to be deemed citizens thereof, so that the right of jurisdiction, civil and criminal, will attach to such persons. *Dearing v. Bank of Charleston*, 5 Ga. 497, 48 Am. Dec. 300 (1848); *Adams v. Lamar*, 8 Ga. 83 (1850); *Molyneux v. Seymour, Fanning & Co.*, 30 Ga. 440, 76 Am. Dec. 662 (1860).

Jurisdiction is to be so exercised as to conclude by judgment none but those who are parties. *Dearing v. Bank of Charleston*, 5 Ga. 497, 48 Am. Dec. 300 (1848); *Adams v. Lamar*, 8 Ga. 83 (1850).

Jurisdiction extends only where it is not surrendered or restrained by the Constitution of the United States. *Johnston v. Riley*, 13 Ga. 97 (1853).

Jurisdiction of nonresidents. — Any court of any county of this state which can serve process on a nonresident, traveling through the state, acquires jurisdiction of that nonresident. *Campbell v. Campbell*, 67 Ga. 423 (1881).

Even though the allegations showed that the defendant was a resident of a foreign jurisdiction, yet where defendant was personally served with process while sojourning within the state and county in which the court was located, where the petitioner resided, the court acquired jurisdiction under former Code 1933, §§ 3-206 and 15-202 (see

O.C.G.A. §§ 9-10-33 and 50-2-21). *Miller v. Miller*, 216 Ga. 535, 118 S.E.2d 85 (1961).

Persons passing through state. — A citizen of another state, passing through this state, may be sued in any county of this state in which the citizen may happen to be at the time when sued. *Murphy v. John S. Winter & Co.*, 18 Ga. 690 (1855).

A person not a citizen, and temporarily sojourning in this state, may be sued in any county thereof in which the person may be found at the time the person is sued, for the jurisdiction of this state extends to "citizens, denizens, or temporary sojourners." *Cheeley v. Fujino*, 131 Ga. App. 41, 205 S.E.2d 83 (1974).

Service on nonresident held proper. — Service of a petition for modification of child support upon a nonresident while the nonresident was visiting children in Georgia was proper. *Hutto v. Plagens*, 254 Ga. 512, 330 S.E.2d 341 (1985).

Foreign executors within limits of state. — Foreign executors or administrators coming within jurisdictional limits of the state are liable to be sued here by creditors, or to be brought to an account by legatees or distributees. *Johnson v. Jackson*, 56 Ga. 326, 21 Am. R. 285 (1876).

Concurrent jurisdiction of state and federal courts. — When the courts of this state and the courts of the United States have concurrent jurisdiction over the subject matters and parties to a controversy, that tribunal which first actually takes the jurisdiction will retain jurisdiction. *Hines & Hobbs v. Rawson*, 40 Ga. 356, 2 Am. R. 581 (1869).

Jurisdiction of a state does not extend beyond the state's territorial limits; conse-

quently, no personal judgment can be obtained against a nonresident unless the nonresident is served, so as to give the court jurisdiction, and that legal service cannot be perfected by forcing a nonresident defendant to come within the jurisdiction of the state in order to perfect personal service and thereby obtain jurisdiction. *Lomax v. Lomax*, 176 Ga. 605, 168 S.E. 863 (1933).

Presence of corporation makes it subject to jurisdiction. — A corporation is for some purposes a citizen, and, if present, is no less subject to the jurisdiction than any other citizen of another state. Besides, a corporation, though a citizen of but one state, may be a resident also of other states. *Louisville & N.R.R. v. Meredith*, 66 Ga. App. 488, 18 S.E.2d 51 (1941), *aff'd*, 194 Ga. 106, 21 S.E.2d 101 (1942).

Service on agent of defendant corporation. — Legal service may be perfected on a defendant railroad corporation which does business in this state, (i.e., has tracks in the state) by serving the corporation's soliciting freight agent who has an office in the county in which the suit is filed and service perfected, although the defendant does no business in the county other than that of the soliciting of freight. *Louisville & N.R.R. v. Meredith*, 66 Ga. App. 488, 18 S.E.2d 51 (1941), *aff'd*, 194 Ga. 106, 21 S.E.2d 101 (1942).

Jurisdiction of person or property. — If the court gets jurisdiction of the person or property of a nonresident, the court will retain jurisdiction to administer justice to the court's own citizens. *Callaway v. Jones & Quattlebum*, 19 Ga. 277 (1856).

Full justice afforded to nonresidents. — A nonresident invoking aid of court will be afforded as full justice as is consistent with the laws and policy of the state. *Reeves v. Southern Ry.*, 121 Ga. 561, 49 S.E. 674, 70 L.R.A. 513, 2 Ann. Cas. 207 (1905); *Seaboard Air-Line Ry. v. Burns*, 17 Ga. App. 1, 86 S.E. 270 (1915).

Jurisdiction over property of nonresident. — The courts have jurisdiction of a nonresident who owns property in a state, although the nonresident does not come within territorial limits. *Molyneux v. Seymour, Fanning & Co.*, 30 Ga. 440, 76 Am. Dec. 662 (1860).

Seizure of nonresident defendant's property. — The extent of available judicial relief in reference to alimony against a nonresi-

dent defendant, who is not personally served in this state, or does not acknowledge service, or who does not voluntarily submit to the jurisdiction of the court by appearing and pleading, is confined to the seizure and utilization of such property as the defendant may own, situated within the jurisdiction of the court. *Hicks v. Hicks*, 193 Ga. 446, 18 S.E.2d 754 (1942).

Jurisdiction properly denied. — Trial court properly dismissed a libel and slander action against a bank, an investment fund, and a supervisor as the supervisor gave the reference underlying the suit from a New York hotel room to an individual in the Netherlands, the law of the Netherlands controlled the case, most witnesses resided in the Netherlands, including the employee, and the supervisor had returned to the Netherlands at the time of the appeal; judicial notice was also taken of the deaths of the trial judge and the court reporter who had handled the case below, which, alone, satisfied O.C.G.A. § 50-2-21(b)(5). *Triguero v. ABN AMRO Bank N.V.*, 273 Ga. App. 92, 614 S.E.2d 209 (2005).

Exemption from service of civil process. — Where there is pending in Florida a suit of A against B, and by stipulation of counsel for both parties, B comes into this state solely for the purpose of taking depositions, B is exempt from service of civil process while taking such depositions and during a reasonable time going and coming, even though the attorney for B testified that the purpose of taking the depositions was to make opposing counsel believe that B would not be present at the trial of the suit in Florida and there was no intention to use the depositions. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

If a person is present in a county other than that of the person's residence, for the sole purpose of attending the taking of depositions therein in a case to which the person is a party, and advantage is taken of the person's presence to serve process on the person in another action, to compel the person to defend it in a jurisdiction other than that of residence, the service of such process should be quashed. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Nonresident witness or party exempt from service. — A nonresident witness or suitor in attendance upon the trial of any case in

court is exempt from service of any writ or summons while so attending, and in going to, or returning from the court. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption from service extends to attendance at other tribunals. — The privilege of exemption from service is not only assured while a nonresident is attending upon strictly judicial proceedings, but upon any tribunal whose business has reference to or is intended to affect judicial proceedings. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Rule of nonresident immunity from service embraces wide scope of tribunals. — Hearings before arbitrators, legislative committees, registers and commissioners in bankruptcy, and examiners and commissions to take depositions, are all embraced within the scope of application of the rule of nonresident immunity from service. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Rule of nonresident immunity extends to every person who in good faith attends as a witness in any proceeding where testimony is to be taken according to the practice of the courts to be used in establishing the rights of a party in any judicial proceeding. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption where controlling purpose for entering state for depositions. — In order for a nonresident to be immune from process under the rule of exemption, the nonresident's main and controlling purpose in coming into this state must be for the purpose of taking the depositions; this is the meaning of the term "good faith" when used in connection with this rule of exemption. *Ewing v. Elliott*, 51 Ga. App. 565, 181 S.E. 123 (1935).

Exemption from service must be claimed. — Service on garnishee temporarily sojourning here as suitor in court was voidable, yet when there was no objection made to the service and no answer filed at either return or second term, default judgment was valid. *Thornton v. American Writing Mach. Co.*, 83 Ga. 288, 9 S.E. 679, 20 Am. St. R. 320 (1889).

Question of jurisdiction not waived by appearance. — In case of a judgment void

for want of personal service of process, the defendant does not waive the question of jurisdiction or validate the void judgment by an appearance after judgment in support of a motion to set the judgment aside. *Hicks v. Hicks*, 193 Ga. 446, 18 S.E.2d 754 (1942).

Voluntary attendance to answer for misdemeanor is not privileged. — A nonresident of the state, voluntarily attending a city court to answer to an accusation for a misdemeanor against the nonresident is not privileged from arrest under civil process nor exempt from service of civil process. *Rogers v. Rogers*, 138 Ga. 803, 76 S.E. 48 (1912).

Defendant in criminal case can be witness in own behalf. — Each of the cases in which service of civil process upon a nonresident criminal defendant was upheld rested upon a rationale that under the law of this state then existing a defendant in a criminal case could not be a "witness" within the meaning of former Code 1933, § 38-1506 (see O.C.G.A. § 24-10-1) because a witness could not take the stand and be sworn on own behalf. These cases are no longer applicable in view of the enactment of former Code 1933, §§ 26-401, 27-405, 38-415 and 38-416 (see O.C.G.A. §§ 16-1-3(1) 17-7-28, and 24-9-20), which authorize a defendant to testify in a criminal case in this state. *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), commented on in 26 Mercer L. Rev. 317.

Immunity of nonresident defendant who appears voluntarily. — Immunity should be extended to the nonresident criminal defendant who voluntarily appears in court to answer a criminal charge in Georgia. *White v. Henry*, 232 Ga. 64, 205 S.E.2d 206 (1974), commented on in 26 Mercer L. Rev. 317.

Cited in *Shea v. Gehan*, 70 Ga. App. 229, 28 S.E.2d 181 (1943); *Curtis v. Curtis*, 215 Ga. 367, 110 S.E.2d 668 (1959); *Ward v. Ward*, 223 Ga. 868, 159 S.E.2d 81 (1968); *Edwards v. Edwards*, 227 Ga. 307, 180 S.E.2d 358 (1971); *Padgett v. Penland*, 230 Ga. 824, 199 S.E.2d 210 (1973); *Chalfant v. Rains*, 244 Ga. 747, 262 S.E.2d 63 (1979); *Williams v. Fuller*, 244 Ga. 846, 262 S.E.2d 135 (1979); *Gant v. Gant*, 254 Ga. 239, 327 S.E.2d 723 (1985).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 4, 5.

C.J.S. — 81A C.J.S., States, §§ 34, 35.

ALR. — Discretion of court to refuse to

entertain action for nonstatutory tort occurring in another state or country, 32 ALR 6; 48 ALR2d 800.

Immunity of nonresident defendant in criminal case from service of process, 20 ALR2d 163.

50-2-22. State consent to acquisition by United States of lands for government purposes.

The consent of the state is given, in accordance with Article I, Section 8, Clause 17 of the Constitution of the United States, to the acquisition by the United States, by purchase, condemnation, or otherwise, of any lands in this state which have been or may be acquired for sites for customs houses, courthouses, post offices, or for the erection of forts, magazines, arsenals, dockyards, and other needful buildings. (Ga. L. 1906, p. 126, §§ 1, 2; Civil Code 1910, § 25; Ga. L. 1927, p. 352, § 1; Code 1933, § 15-301.)

JUDICIAL DECISIONS

Statutes attempting to waive state's right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22 through 50-2-24), attempted to waive the state's sovereign right to tax, the statute's were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action, and it was not error for the court to dismiss the same on demurrer (now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Cession of complete and general jurisdiction over United States' lands. — The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an act of repeal or amendment of prior Acts. It is a new and general statute by which this state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for "purposes of government." Former Code 1933, § 15-301 (see O.C.G.A. § 50-2-22) was in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVIII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Counties have right to tax private property located upon federal lands. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I,

Para. I), and were, to the extent that the statutes undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition sought to defeat the county's attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state's right to tax, the petition alleged no cause of action, and the court did not err in sustaining the demurrers (now motion to dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in *pari materia* with Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with the business of the United States. Taxing the private property could not conceivably interfere with the government's business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Lands acquired by United States are free from certain state interference. — Where lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to the qualification that if upon them forts, arsenals, or other public buildings are erected for the use of the

general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. *Brittain v. Reid*, 220 Ga. 794, 141 S.E.2d 903 (1965).

State possesses jurisdiction over robbery in post office. — Where a robbery occurred in a United States post office, the defendant's contention that the federal govern-

ment had exclusive jurisdiction over the offense since the robbery occurred on federal property was without merit. *Harris v. State*, 186 Ga. App. 756, 368 S.E.2d 527 (1988).

Cited in *Dicks v. Dicks*, 177 Ga. 379, 170 S.E. 245 (1933); *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967); *Powers v. State*, 261 Ga. App. 296, 582 S.E.2d 237 (2003).

OPINIONS OF THE ATTORNEY GENERAL

No jurisdiction over national military park. — Game and Fish Commission (now Department of Natural Resources) of this state does not have jurisdiction over the premises of the Chickamauga-Chattanooga National Military Park for the purpose of checking fishing licenses and other violations of fishing and hunting laws which might occur on the premises of the park. 1945-47 Op. Att'y Gen. p. 51.

Exclusive criminal jurisdiction. — Although in earlier Acts consenting to acquisition and ceding jurisdiction over land for the park, criminal jurisdiction was specifically reserved by the State of Georgia, exclusive jurisdiction was ceded by this section. 1945-47 Op. Att'y Gen. p. 51.

Building safety council has no right or duty to inspect: (a) properties of the federal government such as military reservations; or (b) properties, such as military housing projects, owned by the government but leased to private persons for nongovernmental uses. 1948-49 Op. Att'y Gen. p. 394.

Juvenile court does not have jurisdiction on military base. — Fort Stewart remains in the exclusive jurisdiction of the federal government and the Juvenile Court of Liberty County does not have jurisdiction over juveniles who have allegedly committed delinquent acts on the military base. 1994 Op. Att'y Gen. No. U94-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, United States, § 33 et seq.

C.J.S. — 91 C.J.S., United States, § 96.

ALR. — Applicability of state statutes or municipal regulations to contracts for performance of work on land owned or leased

by the federal government, 91 ALR 779; 115 ALR 371; 127 ALR 827.

Applicability of statute or municipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-23. Exclusive jurisdiction ceded over lands acquired by United States; exceptions.

Exclusive jurisdiction in and over any lands acquired by the United States as provided in Code Section 50-2-22 is ceded to the United States for all purposes except service upon such lands of all civil and criminal process of the courts of this state; but the jurisdiction so ceded shall continue no longer than the United States shall own such lands. The state retains its civil and criminal jurisdiction over persons and citizens in the ceded territory, as over other persons and citizens in this state, except as to any ceded territory owned by the United States and used by the Department of Defense and except as to any ceded territory owned by the United States and used by the

Department of Justice for penal institutions, custodial institutions, or correctional institutions, but the state retains jurisdiction over the taxation of private property and the regulation of public utility services in any ceded territory. Nothing in this Code section shall interfere with the jurisdiction of the United States over any matter or subjects set out in the acts of Congress donating money for the erection of public buildings for the transaction of its business in this state or with any laws, rules, or regulations that Congress may adopt for the preservation and protection of its property and rights in the ceded territory and the proper maintenance of good order therein. (Ga. L. 1890-91, p. 201, § 1; Civil Code 1895, § 25; Civil Code 1910, § 26; Ga. L. 1927, p. 352, § 2; Code 1933, § 15-302; Ga. L. 1952, p. 264, § 1; Ga. L. 1963, p. 555, § 1.)

JUDICIAL DECISIONS

Statutes void where they attempt to waive state's right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) attempted to waive the state's sovereign right to tax, the statutes were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action, and it was not error for the court to dismiss the same on demurrer (now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Taxation of private property upon United States' lands. — Former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I), and were, to the extent that they undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition seeks to defeat the county's attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state's right to tax, the petition alleged no cause of action, and the court did not err in sustaining the demurrers (now motion to dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-304 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in *pari materia* with Ga. Const.

1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with the business of the United States. Taxing the private property could not conceivably interfere with the government's business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Cession of complete and general jurisdiction over United States lands. — The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an Act of repeal or amendment of prior Acts. It is a new and general statute by which this state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for "purposes of government." Former Code 1933, § 15-302 (see O.C.G.A. § 50-2-23) was in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Former Code 1933, § 15-302 (see O.C.G.A. § 50-2-23) was a partial cession of jurisdiction; while former Code 1933, § 15-303 described the time of vesting. Neither purported to condition state consent upon federal acceptance. *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967).

O.C.G.A. § 50-2-23 as offer to cede criminal jurisdiction to United States. — This

section amounts to an offer to cede criminal jurisdiction to the United States which, to become effective, must be accepted in the proper manner by the latter, and the burden of showing such acceptance rests with the defendant in a criminal case who contends that the state court is without jurisdiction to try defendant for an offense against state laws allegedly committed within the confines of the military installation. *Dobbins v. State*, 114 Ga. App. 403, 151 S.E.2d 549 (1966).

Requisite showing of federal acceptance of jurisdiction. — Where a deputy sheriff arrested the defendant for driving under the influence and driving without a license in a park and, at the subsequent trial, the arresting officer testified that the park was federal property, managed by the U.S. Army Corp of Engineers, assuming that the park was federal property used by the Department of Defense, since defendant failed to make the requisite showing of federal acceptance of criminal jurisdiction, the trial court properly declined to dismiss the prosecution. *Jackson v. State*, 183 Ga. App. 594, 359 S.E.2d 457 (1987).

Laws in federal territory derive their authority and force from United States. — Any law existing in territory over which the United States has "exclusive" sovereignty must derive its authority and force from the

United States and is for that reason federal law, even though having its origin in the law of the state within the exterior boundaries of which the federal area is situated. *Mater v. Holley*, 200 F.2d 123 (5th Cir. 1952).

Lands acquired by United States free from certain state interference. — Where lands are acquired in any other way by the United States within the limits of a state than by purchase with her consent, they will hold the lands subject to the qualification that if upon them forts, arsenals, or other public buildings are erected for the use of the general government, such buildings, with their appurtenances, as instrumentalities for the execution of its powers, will be free from any such interference and jurisdiction of the state as would destroy or impair their effective use for the purposes designed. *Brittain v. Reid*, 220 Ga. 794, 141 S.E.2d 903 (1965).

State possesses jurisdiction over robbery in post office. — Where a robbery occurred in a United States post office, the defendant's contention that the federal government had exclusive jurisdiction over the offense since the robbery occurred on federal property was without merit. *Harris v. State*, 186 Ga. App. 756, 368 S.E.2d 527 (1988).

Cited in *Shea v. Gehan*, 70 Ga. App. 229, 28 S.E.2d 181 (1943); *Powers v. State*, 261 Ga. App. 296, 582 S.E.2d 237 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Regulating public utilities in any ceded territory is not incompatible with Ga. Const. 1983, Art. I, Sec. VIII, Para. XVII, and former Code 1933, § 15-302 effectively ceded jurisdiction over lands used by the Department of Defense. 1952-53 Op. Att'y Gen. p. 8.

Taxation of property of public utilities on federal property. — The state has jurisdiction, for purposes of taxation, of property of public utilities located on property in this state belonging to the federal government. 1952-53 Op. Att'y Gen. p. 186.

Board usually has no authority to regulate post-secondary educational institutions. — The State Board of Education is without authority to regulate post-secondary educational institutions which are operated on federal military bases, unless the authority to do so is granted by federal statute, regula-

tion, or consent. 1978 Op. Att'y Gen. No. 78-67.

Coroner has no authority to sign death certificate of civilian employee of the United States army who committed suicide on a military reservation within the boundaries of a county of Georgia. 1975 Op. Att'y Gen. No. 75-97.

Building safety council has no right or duty to inspect: (a) properties of the federal government such as military reservations; or (b) properties, such as military housing projects, owned by the government but leased to private persons for nongovernmental uses. 1948-49 Op. Att'y Gen. p. 394.

Federal installations purchasing distilled spirits directly from distiller. — A military or naval installation which is located on property that has been ceded to the United States by this state has the right to buy distilled

spirits directly from the distiller without the payment of Georgia tax or warehouse charges. 1948-49 Op. Att'y Gen. p. 591.

Juvenile court does not have jurisdiction on military base. — Fort Stewart remains in the exclusive jurisdiction of the federal gov-

ernment and the Juvenile Court of Liberty County does not have jurisdiction over juveniles who have allegedly committed delinquent acts on the military base. 1994 Op. Att'y Gen. No. U94-10.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

ALR. — Applicability of statute or munic-

ipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-23.1. Cession of concurrent jurisdiction to United States over certain lands within state; application to Governor; procedure for effecting cession.

(a) The consent of the State of Georgia is given to the cession of concurrent jurisdiction to the United States of America over lands within the boundaries of the State of Georgia that are owned by the United States of America or over which such jurisdiction is necessary for the effective administration and management of the lands owned by the United States.

(b) Whenever the United States of America desires to acquire concurrent jurisdiction over lands of the type described in subsection (a) of this Code section, application therefor shall be made to the Governor by the principal officer of the agency of the United States having administrative and legal control over the land and shall describe with specificity the lands for which concurrent jurisdiction is sought. For the purpose of this Code section, "legal control" shall include the authority to sell, convey, rent, lease, make covenants, alienate, or otherwise control by lawful means, any and all interests and rights in real property including but not limited to the right of possession to, use of, and travel upon or over relevant lands.

(c) Upon receipt of an application to acquire concurrent jurisdiction on behalf of the United States over lands of the type described in subsection (a) of this Code section, the Governor is authorized to cede concurrent jurisdiction over such lands to the United States.

(d) Cession of concurrent jurisdiction shall be effected by means of negotiation and execution of an agreement between the Governor on behalf of the state and the principal officer of the United States agency having administrative and legal control over the land. Any jurisdiction not specifically ceded in any such agreement is reserved to the state. Cession of such concurrent jurisdiction as is ceded by the state in any such agreement shall become effective upon the acceptance by the United States indicated in writing upon the instrument of cession by the authorized official or officials of the United States.

(e) Nothing contained in this Code section or in any instrument executed pursuant to it shall be construed as consent either to the preemption of any of the laws and regulations of this state or to the exemption of any federal lands from regulation pursuant to the laws and regulations of this state to the extent such lands are subject thereto. Nor shall any provision of this law or any instrument executed pursuant thereto be construed as a limitation or restriction upon the power, right, and authority of the General Assembly to enact laws and authorize the promulgation of regulations. (Code 1933, § 15-302.1, enacted by Ga. L. 1982, p. 1867, § 1; Code 1981, § 50-2-23.1, enacted by Ga. L. 1982, p. 1867, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

50-2-23.2. Concurrent jurisdiction over lands of the National Infantry Museum; limits to concurrent jurisdiction; cession of concurrent jurisdiction; state laws and regulations not preempted.

(a) The consent of the State of Georgia is given to the cession of concurrent jurisdiction to the United States of America over lands within the boundaries of the State of Georgia which are owned by the National Infantry Foundation and which are incorporated into and used for the operation of the National Infantry Museum in Columbus, Georgia, or over which such jurisdiction is necessary for the effective administration and management of such museum, specifically including the following described territory:

All that certain tract of land containing 90.63 acres located in Land Lots 37, 54, 55, 59 and 60 of the 7th Land District, Columbus, Muscogee County, Georgia, and being more particularly described as follows according to the survey by Barrett & McPherson, Inc., Engineers & Land Surveyors of Eufaula, Alabama:

Starting at an iron pin at the intersection of the West right of way of Fort Benning Boulevard and the North line of Land Lot 37 of the 7th Land District of Muscogee County, Georgia, being a point on the boundary of the Fort Benning Military Reservation, go along the North line of said Land Lot 37 and the boundary of the Fort Benning Military Reservation North 88 degrees 47 minutes 39 seconds West 12.45 feet to a concrete monument which lies 50 feet West of the centerline of the Southbound lane of Fort Benning Boulevard, as measured at right angles thereto, thence continue along the North line of Land Lot 37 and the boundary of the Fort Benning Military Reservation North 88 degrees 47 minutes 39 seconds West 401.06 feet to a railroad rail iron stake at the Northeast corner of that certain tract of land conveyed by the United States of

America to the City of Columbus, Georgia by Quit Claim Deed dated 25 August, 1975 and recorded in Deed Book 1563 at pages 373, et seq., in the Office of the Clerk of Superior Court of Muscogee County, Georgia, also being the POINT of BEGINNING; thence along the East and South lines of said tract of land Quit Claimed to the City of Columbus, Georgia the following courses: South 20 degrees 37 minutes 05 seconds West 936.78 feet to an iron pin; South 20 degrees 36 minutes 04 seconds West 2493.94 feet to an iron pin; South 20 degrees 35 minutes 16 seconds West 770.61 feet; a curve, concave Easterly, having a radius of 5786.81 feet, an arc length of 2568.74 feet, and a chord of South 07 degrees 52 minutes 16 seconds West 2547.70 feet to an iron pin; South 04 degrees 49 minutes 11 seconds East 207.24 feet to an iron pin; a curve, concave Westerly, having a radius of 3611.86 feet, an arc length of 17.47 feet, and a chord of South 04 degrees 40 minutes 52 seconds East 17.47 feet to an iron pin; a curve, concave Northwesterly, having a radius of 596.89 feet, an arc length of 696.09 feet, and a chord of South 58 degrees 38 minutes 25 seconds West 657.31 feet to an iron pin; thence North 87 degrees 57 minutes 02 seconds West 156.25 feet to an iron pin 50 feet East of the centerline of South Lumpkin Road, as measured at right angle thereto; thence along a line 50 feet East of the centerline of South Lumpkin Road, as measured at right angles thereto, the following courses: a curve, concave Southeasterly, having a radius of 3798.62 feet, an arc length of 329.36 feet, and a chord of North 07 degrees 58 minutes 57 seconds East 329.25 feet to an iron pin; North 10 degrees 31 minutes 29 seconds East 1115.76 feet to an iron pin; a curve, concave Westerly, having a radius of 5791.07 feet, an arc length of 625.22 feet, and a chord of North 07 degrees 25 minutes 55 seconds East 624.91 feet to an iron pin; North 04 degrees 20 minutes 20 seconds East 2587.34 feet to an iron pin; a curve, concave Westerly, having a radius of 11178.19 feet, an arc length of 613.36 feet, and a chord of North 02 degrees 46 minutes 01 seconds East 613.29 feet to an iron pin; North 01 degree 14 minutes 08 seconds East 26.19 feet to an iron pin at the Southwest corner of that certain 60.05 acre tract of land conveyed by the United States of America to Bickerstaff Clay Products Company, Inc. by Exchange Deed recorded in Deed Book 4159 at pages 213, et seq., in the Office of the Clerk of Superior Court of Muscogee County, Georgia; thence along the South and East lines of said tract of land conveyed to Bickerstaff Clay Products Company, Inc. the following courses: South 88 degrees 46 minutes 21 seconds East 1140.02 feet to an iron pin; North 20 degrees 37 minutes 20 seconds East 1021.08 feet to an iron pin; North 20 degrees 36 minutes 33 seconds East 884.18 feet to an iron pipe on the aforementioned North line of Land Lot 37; thence along the North line of Land Lot 37 South 88 degrees 44 minutes 49 seconds East 158.99 feet to the POINT of BEGINNING.

(b) Such concurrent jurisdiction granted to the United States of America by this Code section shall be limited to the provision of law enforcement

services, security, and fire protection; the enforcement of applicable laws, rules, regulations, and ordinances of the state, the United States, and Columbus, Georgia; the trial of offenses and ordinance violations in the courts the United States, the State of Georgia, and Columbus, Georgia; and to such additional matters as may be the subject of the written agreement provided for in subsection (c) of this Code section.

(c) Cession of concurrent jurisdiction shall be effected by means of negotiation and execution of an agreement between the Governor on behalf of the state, the commanding general of the United States Army Infantry Center at Fort Benning, the governing authority of Columbus, Georgia, and the governing board of the National Infantry Foundation or any successor owner or operator of the National Infantry Museum and the property on which it is located. Any jurisdiction not specifically ceded in any such agreement is reserved to the state. Cession of such concurrent jurisdiction as is ceded by the state in any such agreement shall become effective upon the acceptance by the United States indicated in writing upon the instrument of cession by the authorized official or officials of the United States.

(d) Nothing contained in this Code section or in any instrument executed pursuant to it shall be construed as consent either to the preemption of any of the laws and regulations of this state or to the exemption of any lands from regulation pursuant to the laws and regulations of this state to the extent such lands are subject thereto. No provision of this Code section or any instrument executed pursuant to this Code section shall be construed as a limitation or restriction upon the power, right, and authority of the General Assembly to enact laws and authorize the promulgation of regulations. (Code 1981, § 50-2-23.2, enacted by Ga. L. 2005, p. 559, § 1/HB 420.)

50-2-24. Vesting of jurisdiction; exemption from state, county, or municipal charges.

The jurisdiction ceded as provided in Code Section 50-2-23 shall not vest until the United States has acquired the title to the lands by purchase, condemnation, or otherwise. As long as the lands remain the property of the United States when acquired by purchase, condemnation, or otherwise, and no longer, the same shall be and continue to be exempt and exonerated from all state, county, and municipal assessment, or other charges which may be levied or imposed under authority of the state. (Ga. L. 1927, p. 352, § 3; Code 1933, § 15-303.)

JUDICIAL DECISIONS

Cession of complete and general jurisdiction over United States lands. — The 1927 Act of cession of jurisdiction (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) is not an Act of repeal or amendment of prior Acts. It is a new and general statute by which this

state makes a complete and general cession of jurisdiction to the federal government over all lands held by the United States for "purposes of government." This section is in no wise contrary to Ga. Const. 1877, Art. III, Sec. VII, Para. XVIII (see Ga. Const. 1983, Art. III, Sec. V, Para. IV). *Bowen v. United States*, 134 F.2d 845 (5th Cir.), cert. denied, 319 U.S. 764, 63 S. Ct. 1320, 87 L. Ed. 1714 (1943).

Portion of O.C.G.A. § 50-2-24 exempting ceded lands from taxation was void. — That portion of this section, purporting to exempt and exonerate from "all state, county, and municipal taxation" such ceded lands was in plain and direct violation of Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I), and was void. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Statutes void where they attempt to waive state's right to tax. — To the extent that former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) attempted to waive the state's sovereign right to tax, the statutes were void. The petition, seeking to prevent taxation of private property located upon lands belonging to the United States, alleged no cause of action, and it was not error for the court to dismiss the same on demurrer (now motion to dismiss). *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

Countries have right to tax private property located upon United States' lands. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) offended Ga. Const. 1945, Art.

VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I), and were, to the extent that they undertook to waive the sovereign right of Georgia to tax, absolutely void. The sole ground upon which the petition seeks to defeat the county's attempt to tax the private property located upon lands belonging to the United States being the abortive attempt by the legislature to waive the state's right to tax, the petition alleges no cause of action, and the court did not err in sustaining the demurrers (now motion to dismiss) and dismissing the petition. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

State taxation must not interfere with business of United States. — Former Code 1933, §§ 15-301 through 15-303 (see O.C.G.A. §§ 50-2-22, 50-2-23, and 50-2-24) must be construed in pari materia with Ga. Const. 1945, Art. VII, Sec. I, Para. II (see Ga. Const. 1983, Art. VII, Sec. I, Para. I). When thus construed, the statutes mean that the United States has no right to prevent taxation so long as such taxation in no wise interferes with the business of the United States. Taxing the private property could not conceivably interfere with the government's business. *IBM Corp. v. Evans*, 213 Ga. 333, 99 S.E.2d 220 (1957).

O.C.G.A. § 50-2-24 describes time of vesting of jurisdiction ceded in O.C.G.A. § 50-2-22. — Former Code 1933, § 15-301 (see O.C.G.A. § 50-2-22) was a partial cession of jurisdiction; while this section described time of vesting. Neither purported to condition state consent upon federal acceptance. *DeKalb County v. Henry C. Beck Co.*, 382 F.2d 992 (5th Cir. 1967).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 158, 160.

C.J.S. — 84 C.J.S., Taxation, §§ 242, 243.

ALR. — Applicability of statute or munic-

ipal regulations to contracts for performance of work on land owned or leased by federal government, 127 ALR 827.

50-2-25. State consent to acquisition by United States of lands for forest and wildlife purposes; concurrent jurisdiction.

The consent of the state is given to the acquisition by the United States by purchase, gift, exchange, or by condemnation according to law, of only such lands as may be contracted, proposed, or offered for sale in writing by the ostensible owner to the United States, in which writing the owner consents to such acquisition, of such lands in all those counties in the

northern and central portions of the state south to and including the Counties of Stewart, Webster, Marion, Taylor, Upson, Monroe, Jones, Putnam, Greene, Taliaferro, Wilkes, Jasper, Elbert, Warren, Hancock, Oglethorpe, Dodge, Treutlen, Laurens, Butts, and Richmond, and in and around the Okefenokee Swamp as in the opinion of state and federal government officials may be needed for the establishment, consolidation, or extension of national forests, forest experiment stations, wildlife sanctuaries, or for rights of way and land on which to build roads, highways, and bridges in the Okefenokee Swamp or for rights of way and land on which to build roads, highways, and bridges to connect the swamp roads with other highways, or for any development purposes best suited on these lands to be acquired by the United States. The state shall retain concurrent jurisdiction with the United States in and over such lands in all cases insofar as civil process is concerned, and such criminal process as may issue under the authority of the state against any person charged with the commission of any crime outside or within the jurisdiction may be executed thereon in like manner as if this law had not been enacted. In all condemnation proceedings, the rights of the federal government shall be limited to the specific objects set forth by laws of the United States in regard to national forests or wildlife sanctuaries and rights of way on which to build roads, highways, and bridges. (Ga. L. 1929, p. 239, § 1; Code 1933, § 15-304; Ga. L. 1935, p. 442, § 1; Ga. L. 1937, p. 458, § 1; Ga. L. 1982, p. 3, § 50.)

Editor's notes. — For compilation of Acts ceding Georgia land to the United States, see the Local Laws Index of this Code.

OPINIONS OF THE ATTORNEY GENERAL

This section gives consent of state to acquisition by United States of lands in designated areas; land in other than the designated areas could not be acquired prior to the consent of this state by the legislature. 1958-59 Op. Att'y Gen. p. 277.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125. 77 Am. Jur. 2d, United States, § 33 et seq.

50-2-26. Reacquisition of jurisdiction over state maintained highways in ceded territory.

Upon the concurrence of the United States by its appropriate action, this state shall thereby reacquire civil and criminal jurisdiction over persons and citizens found upon any highway or road maintained and used by this state for highway purposes within any ceded territory owned by the United States and used by the Department of Defense. (Ga. L. 1957, p. 319, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125.

50-2-27. Retrocession of jurisdiction over lands owned by the United States.

(a) The consent of this state is given to the retrocession of jurisdiction, either partially or wholly, by the United States over land owned by the United States within the boundaries of this state; and the Governor is authorized to accept for the state such retrocession of jurisdiction.

(b) Retrocession of jurisdiction shall be effected upon written notice by the principal officer of the agency of the United States having supervision and control over the land to the Governor, such notice describing the land by metes and bounds and specifying the nature of the jurisdiction therein to be retroceded to the state and the entry of acceptance upon the written notice by the Governor. (Ga. L. 1975, p. 1301, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 125.

50-2-28. Capitol Square designated; state control and jurisdiction over buildings and grounds; Governor authorized to deed part of grounds to City of Atlanta for traffic movement.

(a) The property owned by this state and the sidewalks and streets within the area in the City of Atlanta bounded by Washington Street, Trinity Avenue, Memorial Drive, Capitol Avenue, Central Place, and Martin Luther King, Jr. Drive is designated as the Capitol Square.

(b) The state shall have the same control and jurisdiction over the use of the buildings and grounds owned by the state and designated as the Capitol Square as have been authorized by law for the control and supervision of the public property formerly known as the State Capitol Buildings and Grounds.

(c) The Governor is authorized and empowered to deed, upon unanimous approval of the Governor, an appointee of the Governor who is not the Attorney General, and state auditor, upon such terms and conditions as they may deem to be to the best interests of the state, to the City of Atlanta such part of the grounds owned by the state and facing Capitol Avenue that is deemed necessary and essential to widen and straighten Capitol Avenue at the entrance to Martin Luther King, Jr. Drive, so as to route traffic into Piedmont Avenue, and such other property owned by the state which is essential or necessary to aid in the movement of traffic around the Capitol

Square. (Ga. L. 1953, Nov.-Dec. Sess., p. 164, §§ 1-3; Ga. L. 1988, p. 426, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “the” was inserted preceding “Attorney General” near the beginning of subsection (c).

CHAPTER 3

STATE FLAG, SEAL, AND OTHER SYMBOLS

Article 1

State and Other Flags

- Sec.
 50-3-1. Description of state flag; militia to carry flag; defacing public monuments; obstruction of Stone Mountain.
 50-3-2. Pledge of allegiance to state flag.
 50-3-3. Display of state flag.
 50-3-4. Designation of Secretary of State as custodian of state flag; procurement and furnishing of flags to schools.
 50-3-4.1. School superintendents and administrative officials authorized to display copies of national motto and American and Georgia flags in certain places; means of acquisition.
 50-3-5. Preservation of Confederate flags.
 50-3-6. Display of Spanish-American War flags.
 50-3-7. Duty of Governor to accept flags.
 50-3-8. Use of national, state, or Confederate flag for advertising, selling, or promoting the sale of merchandise unlawful.
 50-3-9. Abuse of federal, state, or Confederate flag unlawful.
 50-3-10. Use of flag for decorative or patriotic purposes.
 50-3-11. Penalty.
 50-3-12. State flags to honor service of deceased qualifying elected state officials.
 50-3-13. State flags to honor service of deceased qualifying public safety officers.

Article 2

Great Seal of the State

- 50-3-30. Description; custody.
 50-3-31. Use and display; facsimile.
 50-3-32. Authorized and unauthorized use or display.

Article 3

Other State Symbols

- Sec.
 50-3-50. State bird.
 50-3-51. State game bird.
 50-3-52. State fish.
 50-3-53. State floral emblem.
 50-3-54. State wild flower.
 50-3-55. Official tree.
 50-3-56. Official fossil.
 50-3-57. Official gem.
 50-3-58. Official insect.
 50-3-59. Official mineral.
 50-3-60. Official song.
 50-3-61. Official waltz.
 50-3-62. Official butterfly.
 50-3-63. Official reptile.
 50-3-64. Official historic drama.
 50-3-65. Official vegetable.
 50-3-66. State theater.
 50-3-67. Official state folk festival.
 50-3-68. Official 'Possum.
 50-3-69. Official musical theatre.
 50-3-70. Official state fruit.
 50-3-71. Poultry Capital of the World.
 50-3-72. State crop; official state peanut monument.
 50-3-73. Official folk dance.
 50-3-74. Official railroad museum.
 50-3-75. Official beef barbecue championship cookoff; official pork barbecue championship cookoff.
 50-3-76. Official tartan.
 50-3-77. Official state transportation history museum designated; maximization of advertising programs.
 50-3-78. State official prepared food.
 50-3-79. Official center for character education.
 50-3-80. Official Frontier and Southeastern Indian Interpretive Center.
 50-3-81. Official amphibian.
 50-3-82. Official cold water game fish.
 50-3-83. Official salt-water fish.
 50-3-84. Official designation of First Mural City.
 50-3-85. Official Georgia historical civil rights museum.

Article 4

Official State Language

Sec.

50-3-100. English designated as official lan-

guage; constitutional rights not denied; authorization for documents and forms in other languages; exceptions.

Editor's notes. — By resolution (see Ga. L. 1982, p. 1355), the General Assembly designated the Georgia Museum of Art at the University of Georgia as the State Museum of Art of the State of Georgia.

By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia. See also Code Section 50-3-100.

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Resolution (Ga. L. 1986, p. 529) adopting English as the official language of the State

of Georgia has the force and effect of law. 1995 Op. Att'y Gen. No. U95-16.

ARTICLE 1

STATE AND OTHER FLAGS

50-3-1. Description of state flag; militia to carry flag; defacing public monuments; obstruction of Stone Mountain.

(a) The flag of the State of Georgia shall consist of a square canton on a field of three horizontal bands of equal width. The top and bottom bands shall be scarlet and the center band white. The bottom band shall extend the entire length of the flag, while the center and top bands shall extend from the canton to the fly end of the flag. The canton of the flag shall consist of a square of blue the width of two of the bands, in the upper left of the hoist of the flag. In the center of the canton shall be placed a representation in gold of the coat of arms of Georgia as shown in the center of the obverse of the Great Seal of the State of Georgia adopted in 1799 and amended in 1914. Centered immediately beneath the coat of arms shall be the words "IN GOD WE TRUST" in capital letters. The coat of arms and wording "IN GOD WE TRUST" shall be encircled by 13 white five-pointed stars, representing Georgia and the 12 other original states that formed the United States of America. Official specifications of the flag, including color identification system, type sizes and fonts, and overall dimensions, shall be established by the Secretary of State, who pursuant to Code Section 50-3-4 serves as custodian of the state flag. Every force of the organized militia shall carry this flag while on parade or review.

(b)(1) It shall be unlawful for any person, firm, corporation, or other entity to mutilate, deface, defile, or abuse contemptuously any publicly owned monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or the several states

thereof, or the Confederate States of America or the several states thereof, and no officer, body, or representative of state or local government or any department, agency, authority, or instrumentality thereof shall remove or conceal from display any such monument, plaque, marker, or memorial for the purpose of preventing the visible display of the same. A violation of this paragraph shall constitute a misdemeanor.

(2) No publicly owned monument or memorial erected, constructed, created, or maintained on the public property of this state or its agencies, departments, authorities, or instrumentalities in honor of the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof shall be relocated, removed, concealed, obscured, or altered in any fashion; provided, however, that appropriate measures for the preservation, protection, and interpretation of such monuments or memorials shall not be prohibited.

(3) Conduct prohibited by paragraphs (1) and (2) of this subsection shall be enjoined by the appropriate superior court upon proper application therefor.

(4) It shall be unlawful for any person, firm, corporation, or other entity acting without authority to mutilate, deface, defile, abuse contemptuously, relocate, remove, conceal, or obscure any privately owned monument, plaque, marker, or memorial which is dedicated to, honors, or recounts the military service of any past or present military personnel of this state, the United States of America or the several states thereof, or the Confederate States of America or the several states thereof. Any person or entity who suffers injury or damages as a result of a violation of this paragraph may bring an action individually or in a representative capacity against the person or persons committing such violations to seek injunctive relief and to recover general and exemplary damages sustained as a result of such person's or persons' unlawful actions.

(c) Any other provision of law notwithstanding, the memorial to the heroes of the Confederate States of America graven upon the face of Stone Mountain shall never be altered, removed, concealed, or obscured in any fashion and shall be preserved and protected for all time as a tribute to the bravery and heroism of the citizens of this state who suffered and died in their cause. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1004; Ga. L. 1951, p. 311, § 43; Ga. L. 1955, p. 10, § 90; Ga. L. 1956, p. 38, § 1; Ga. L. 2001, p. 1, § 1; Ga. L. 2003, p. 26, § 1; Ga. L. 2004, p. 731, § 1.)

Cross references. — Display of state flag by agencies, § 45-12-83.1.

Editor's notes. — Ga. L. 2003, p. 26, § 2, not codified by the General Assembly, called for a referendum to modify the state flag which was held on March 2, 2004, and the

2003 State Flag, adopted at the 2003 Session of the General Assembly, was approved by a vote of 577,370 to 212,020.

Ga. L. 2003, p. 26, § 3, not codified by the General Assembly, provides for severability.

Law reviews. — For note on the 2001

amendment to this Code section, see 18 Ga. St. U. L. Rev. 305 (2001). For note on the

2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 256 (2003).

JUDICIAL DECISIONS

Constitutionality of flag. — The Georgia state flag, which incorporated the stars and bars of the Confederate flag, did not violate an African-American citizen's equal protection rights, even though a discriminatory purpose was a motivating factor in the passage of O.C.G.A. § 50-3-1, since the evidence failed to show a sufficiently concrete, present-day discriminatory impact on African-Americans. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

The state flag, incorporating the stars and bars of the Confederate flag, did not violate the due process clause by depriving an African-American citizen of any fundamental privacy interest in associating with white people free from unwarranted government intrusion since the record did not support the claim. Moreover, plaintiff's right to associate with white people in general is not the type of intimate relationship garnering constitutional protection under this theory. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

African-American citizen's argument that

the state flag, incorporating the stars and bars of the Confederate flag, compelled the African-American citizen to be the courier of a morally objectionable ideological message failed because the flag on the flag's face does not promulgate a sufficiently clear message of discrimination and because the record contained no evidence that the citizen was forced to acknowledge the flag in any way. *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

Display of the Georgia state flag did not violate African-American citizen's constitutional rights to equal protection and freedom of expression. *Coleman v. Miller*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

Validity under federal law. — For discussion of the state flag in relation to the federal Smith Act, 18 U.S.C. § 2385, Title II of the Civil Rights Act, 42 U.S.C. § 2000a, and the Voting Rights Act, 42 U.S.C. § 1971(b), see *Coleman v. Miller*, 885 F. Supp. 1561 (N.D. Ga. 1995), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998); *Coleman v. Miller*, 912 F. Supp. 522 (N.D. Ga. 1996), *aff'd*, 117 F.3d 527 (11th Cir. 1997), *cert. denied*, 523 U.S. 1011, 118 S. Ct. 1199, 140 L. Ed. 2d 328 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, §§ 1, 2.

C.J.S. — 36A C.J.S., Flags, § 1 et seq.

50-3-2. Pledge of allegiance to state flag.

The following is adopted as the pledge of allegiance to the state flag:

"I pledge allegiance to the Georgia flag and to the principles for which it stands: Wisdom, Justice, and Moderation." (Ga. L. 1951, p. 311, § 47; Ga. L. 1955, p. 10, § 94.)

Cross references. — Student directory selective service, pledge of allegiance, information, registering to vote and with § 20-2-310.

50-3-3. Display of state flag.

The state flag shall be displayed on appropriate occasions in the public and private schools of this state and in all patriotic meetings, and the citizens of the state are requested to take the pledge of allegiance set out in Code Section 50-3-2. (Ga. L. 1951, p. 311, § 48; Ga. L. 1955, p. 10, § 95.)

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School display. — O.C.G.A. § 50-3-3 requires that the state flag be displayed in the schools on appropriate occasions, as determined by local school boards, within their scope of discretion relating to educational responsibilities; and local school boards may fix the time between the hours of 7:30 a.m. and 4:00 p.m. on days when school attendance is required as an "appropriate occasion." 1994 Op. Att'y Gen. No. U94-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.
C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-4. Designation of Secretary of State as custodian of state flag; procurement and furnishing of flags to schools.

The Secretary of State is designated as the custodian of the state flag. From funds made available for such purpose, the Secretary of State shall procure suitable state flags; and he shall be authorized to furnish, without cost, to the various public schools of this state, to the superior and state courts, and to other departments and agencies of the state, counties, or municipal authorities, such flags for their use in displaying same. From such funds he is authorized also to procure such flags and facsimiles thereof as may cause the flag sufficiently and properly to be made known and displayed. (Ga. L. 1956, p. 38, § 2; Ga. L. 1970, p. 192, § 1; Ga. L. 1981, p. 986, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.
C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-4.1. School superintendents and administrative officials authorized to display copies of national motto and American and Georgia flags in certain places; means of acquisition.

(a) Local school superintendents of the public schools in this state and the appropriate administrative officials of the various institutions and agencies of this state, provided that sufficient funds or the items themselves are available as provided in subsection (b) of this Code section, are authorized to place a durable poster or framed copy representing the following which may be displayed in each public elementary and secondary school library and classroom in this state and in each public building or facility in this state which is maintained or operated by state funds:

(1) Our national motto, "In God We Trust";

(2) A true and correct representation of the American flag, which shall be centered under the national motto; and

(3) A true and correct representation of the Georgia state flag.

(b) The copies or posters authorized by this Code section shall either be donated or shall be purchased solely with funds made available through voluntary contributions to the local school boards in the case of displays in public schools or to the Georgia Building Authority in the case of displays in state buildings and facilities. (Ga. L. 1982, p. 913, § 1; Code 1981, § 50-3-4.1, enacted by Ga. L. 1982, p. 913, § 2.)

Editor's notes. — Ga. L. 1982, p. 913, § 3, effective April 13, 1982, not codified by the General Assembly provided: "A copy of this Act shall be mailed directly to each school

board in this state. A copy of this Act shall be mailed directly to each board member, school superintendent, and curriculum director of the state school system of Georgia."

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Constitutionality. — The provision of O.C.G.A. § 50-3-4.1 allowing display of the motto "In God We Trust" in public does not

violate the separation of church and state provisions of either the state or federal Constitutions. 2000 Op. Att'y Gen. No. 00-9.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-5. Preservation of Confederate flags.

The flags of the Georgia troops who served in the army of the Confederate States, and which have been returned to the state by the United States government, shall be preserved for all time in the capitol as priceless mementos of the cause they represented and of the heroism and patriotism of the men who bore them. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1005; Ga. L. 1951, p. 311, § 44; Ga. L. 1955, p. 10, § 91.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.
C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-6. Display of Spanish-American War flags.

The flags of the Georgia regiments which engaged in the Spanish-American War shall be displayed in the corridors of the capitol in a manner similar to those of the Confederate regiments. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1006; Ga. L. 1951, p. 311, § 45; Ga. L. 1955, p. 10, § 92.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.
C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-7. Duty of Governor to accept flags.

When any flag referred to in Code Section 50-3-5 or 50-3-6 is offered to the state, it shall be the duty of the Governor to accept it in behalf of the state and to make such provisions for its preservation as may be necessary to protect and preserve it from the ravages of time, dust, and moths. (Ga. L. 1916, p. 158, § 3; Code 1933, § 86-1007; Ga. L. 1951, p. 311, § 46; Ga. L. 1955, p. 10, § 93; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 2.
C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-8. Use of national, state, or Confederate flag for advertising, selling, or promoting the sale of merchandise unlawful.

(a) It shall be unlawful for any person, firm, or corporation to copy, print, publish, or otherwise use the flag of the United States, the flag, coat of arms, or state emblem of the State of Georgia, or the flag or emblem of the Confederate States of America, or any flag or emblem used by the Confederate States of America or the military or naval forces of the Confederate States of America at any time within the years 1860 to 1865, both inclusive, for the purpose of advertising, selling, or promoting the sale of any article of merchandise whatever within this state.

(b) Notwithstanding subsection (a) of this Code section, any person, firm, or corporation which contracts with the state to publish an official

Code shall be authorized to use the state emblem on the cover of the publication. Utilization by the contracting person, firm, or corporation of the cover of the publication, with the state emblem thereon, for advertising purposes shall not constitute a violation of subsection (a) of this Code section. (Ga. L. 1960, p. 985, § 1; Ga. L. 1982, p. 3, § 50.)

Cross references. — Enactment of official Code, § 1-1-1. Offenses against public order and safety, Ch. 11, T. 16.

OPINIONS OF THE ATTORNEY GENERAL

Replica of state flag may not be printed upon packets or envelopes containing sugar in order to promote the image of this state in the minds of the people who use the product. 1967 Op. Att'y Gen. No. 67-323.

"Public service" advertisement bearing name of private sponsor. — A proposed

"public service" advertisement which prints, publishes, or otherwise uses the flag of the State of Georgia and bears the name of a private corporate sponsor would be in violation of O.C.G.A. § 50-3-8. 1992 Op. Att'y Gen. No. 92-14.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, § 3. 74 Am. Jur. 2d, Trademarks and Tradenames, § 41.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A

C.J.S., States, § 79. 87 C.J.S., Trademarks, Trade-names and Unfair Competition, § 164.

50-3-9. Abuse of federal, state, or Confederate flag unlawful.

It shall be unlawful for any person, firm, or corporation to mutilate, deface, defile, or abuse contemptuously the flag of the United States, the flag, coat of arms, or emblem of the State of Georgia, or the flag or emblem of the Confederate States of America by any act whatever. (Ga. L. 1960, p. 985, § 2.)

Cross references. — Offenses against public order and safety, Ch. 11, T. 16.

JUDICIAL DECISIONS

Editor's notes. — Many of these annotations were based on cases decided prior to the U.S. Supreme Court decisions as to burning of the flag of the United States (See *Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) and *United States v. Eichman*, 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990)).

In light of the similarity of the statutory provisions, decisions under former Code 1933, § 26-2803, which was subsequently repealed but was succeeded by provisions in

this Code section, are included in the annotations for this Code section.

O.C.G.A. § 50-3-9 is not unconstitutional. — The language of this section making it unlawful to mutilate, deface, defile, or contemptuously abuse the flags by any act is not vague, uncertain, or indefinite, and this section is accordingly not unconstitutional. *Hinton v. State*, 223 Ga. 174, 154 S.E.2d 246 (1967), rev'd on other grounds sub nom. *Anderson v. Georgia*, 390 U.S. 206, 88 S. Ct. 902, 19 L. Ed. 2d 1039 (1968).

Freedom of speech not involved in prohibitions in O.C.G.A. § 50-3-9. — The conduct sought to be prohibited by this section is conduct which shows open disrespect for the flag, and no question of freedom of speech is involved. *Hinton v. State*, 223 Ga. 174, 154 S.E.2d 246 (1967), rev'd on other grounds sub nom. *Anderson v. Georgia*, 390 U.S. 206, 88 S. Ct. 902, 19 L. Ed. 2d 1039 (1968); *Monroe v. State*, 250 Ga. 30, 295 S.E.2d 512 (1982).

Flag burning is not protected by the free speech provision of the first amendment as the state's interest in protecting the physical

integrity of the United States flag justifies regulation of both specific destructive conduct toward the flag and minor limitations on symbolic speech concomitant to that conduct. *Monroe v. State*, 250 Ga. 30, 295 S.E.2d 512 (1982).

Conviction for mutilating, defacing, and defiling a flag upheld. See *Bowles v. State*, 168 Ga. App. 763, 310 S.E.2d 250 (1983), cert. denied, 465 U.S. 1112, 104 S. Ct. 1619, 80 L. Ed. 2d 148 (1984).

Cited in *Monroe v. State* Court, 560 F. Supp. 542 (N.D. Ga. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — Many of these annotations were based on opinions rendered prior to the U.S. Supreme Court decisions as to burning of the flag of the United States (See *Texas v. Johnson*, 491 U.S. 397, 109 S. Ct. 2533, 105 L. Ed. 2d 342 (1989) and *United States v. Eichman*, 496 U.S. 310, 110 S. Ct. 2404, 110 L. Ed. 2d 287 (1990)).

In light of the similarity of the statutory provisions, decisions under former Code

1933, § 26-2803, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Replica of state flag may not be printed upon packets or envelopes containing sugar in order to promote the image of this state in the minds of the people who use the product. 1967 Op. Att'y Gen. No. 67-323 (decided under former Code 1933, § 26-2803).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Flag, § 3 et seq.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

ALR. — What constitutes violation of flag desecration statutes, 41 ALR3d 502.

50-3-10. Use of flag for decorative or patriotic purposes.

Nothing in this article shall be construed to prevent the use of the flag of the United States or any flag, standard, color, shield, ensign, or other insignia of the State of Georgia or of the Confederate States of America for decorative or patriotic purposes, either inside or outside of any residence, store, place of business, public building, or school building. (Ga. L. 1960, p. 985, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, §§ 2, 3.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4.

50-3-11. Penalty.

Any person, firm, or corporation who violates any provision of Code Section 50-3-8 or 50-3-9 shall be guilty of a misdemeanor. (Ga. L. 1960, p. 985, § 4.)

Cross references. — Offenses against public order and safety, Ch. 11, T. 16.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35A Am. Jur. 2d, Flag, § 2 et seq.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, § 79.

ALR. — What constitutes violation of flag desecration statutes, 41 ALR3d 502.

50-3-12. State flags to honor service of deceased qualifying elected state officials.

(a) The purpose of this Code section is to recognize and honor those men and women who have dedicated their lives to public service through the representation of the citizens of this state and, in devoted service thereto, safeguarded the health, safety, and welfare of the citizens of the State of Georgia. To carry out this purpose, the Secretary of State shall, from funds made available for such purpose, furnish, without cost, a state flag to honor the service of a deceased qualifying elected state official, which state flag may be displayed in the funeral service of the deceased elected state official and thereafter given to the elected state official's estate.

(b) For purposes of this Code section, a “qualifying elected state official” is an official elected to serve in a state position and shall include members of the Georgia General Assembly and any official elected by state-wide or local election to serve in a constitutionally created executive or judicial position or elected position on any constitutionally established board or commission. A person committing or convicted of a felony or crime of moral turpitude during or subsequent to holding office or who has been impeached or otherwise removed from public office shall not be considered a “qualifying elected state official.”

(c) The Secretary of State is authorized to administer the recognition program set forth in this Code section and to provide rules and regulations and enter into contracts necessary for the administration of the provisions and the purposes set forth in this Code section. (Code 1981, § 50-3-12, enacted by Ga. L. 2006, p. 214, § 1/HB 1246; Ga. L. 2007, p. 47, § 50/SB 103.)

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, substituted “this Code

section” for “the Code section” at the end of subsection (c).

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2006, Code Section 50-3-12, as enacted by Ga. L. 2006, p. 631, § 1, was redesignated as Code Section 50-3-13. Another Code Section 50-3-12 was enacted by Ga. L. 2006, p. 214, § 1.

Editor's notes. — Ga. L. 2006, p. 214, § 2, not codified by the General Assembly, provides that this Code section shall apply to the death of a qualifying elected state official occurring on or after July 1, 2006.

50-3-13. State flags to honor service of deceased qualifying public safety officers.

(a) The purpose of this Code section is to recognize and honor those brave men and women who have dedicated their lives to the public safety of the citizens of this state and, in devoted service thereto, contributed to the safety, security, and individual freedom of the citizens of the State of Georgia. To carry out this purpose, the Secretary of State shall, if requested, from funds made available for such purpose, furnish, without cost, a state flag to honor the service of a deceased qualifying public safety officer, which state flag may be displayed in the funeral service of the deceased public safety officer and thereafter given to the officer's estate.

(b) For purposes of this Code section, a "qualifying public safety officer" is a peace officer, as defined in Code Section 35-8-2, sheriff, or firefighter, emergency medical technician, or emergency rescue specialist, as each is defined in Code Section 45-9-81, or member of the Georgia National Guard. In addition, "qualifying public safety officer" is an officer killed in the line of duty or an officer who has served as a qualifying public safety officer for a period of not less than five years. A person committing or convicted of a felony or crime of moral turpitude or whose certification or license to practice as a public safety officer is revoked or terminated shall not be considered a "qualifying public safety officer."

(c) It shall be the duty of any state or local agency with knowledge of the death of a qualifying public safety officer who is an employee of such agency or who retired from such agency to notify the Secretary of State's office for the purpose of providing a state flag to the deceased's estate. Any advocacy group representing the deceased or the deceased's department may also contact the Secretary of State on behalf of a deceased qualifying public safety officer.

(d) The Secretary of State is authorized to administer the recognition program set forth in this Code section and to provide rules and regulations and enter into contracts necessary for the administration of the provisions and the purposes set forth in this Code section. (Code 1981, § 50-3-13, enacted by Ga. L. 2006, p. 631, § 1/SB 381; Ga. L. 2007, p. 47, § 50/SB 103.)

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, substituted "this Code

section" for "the Code section" at the end of subsection (d).

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2006, Code Section 50-3-12, as enacted by Ga. L. 2006, p. 631, § 1, was redesignated as Code Section 50-3-13. Another Code Section 50-3-12 was enacted by Ga. L. 2006, p. 214, § 1.

Editor's notes. — Ga. L. 2006, p. 631, § 2, not codified by the General Assembly, provides that this Code section shall apply to the death of a qualifying public safety officer occurring on or after January 1, 2006.

ARTICLE 2

GREAT SEAL OF THE STATE

50-3-30. Description; custody.

(a) The Secretary of State shall keep the great seal of the state adopted August 17, 1914, and on deposit in the office of the Secretary of State. The seal shall be either of silver or of some harder and more durable metal or composition of metals, 2 1/4 inches in diameter.

(b) The device on one side is a view of the seashore, with a ship bearing the flag of the United States riding at anchor near a wharf, receiving on board hogsheads of tobacco and bales of cotton, emblematic of the exports of this state; at a small distance a boat, landing from the interior of the state, with hogsheads, etc., on board, representing the state's internal traffic; in the back part of the same side a man in the act of plowing; and at a small distance a flock of sheep in different postures, shaded by a flourishing tree. The motto inscribed thereon is "Agriculture and Commerce, 1776."

(c) The device on the other side is three pillars supporting an arch, with the word "Constitution" engraved within the same, emblematic of the Constitution, supported by the three departments of government, namely the legislative, judicial, and executive. The first pillar has engraved upon a scroll "Wisdom," the second, "Justice," the third, "Moderation"; between the second and third pillars a man stands with a drawn sword, representing the aid of the military in the defense of the Constitution, and the motto is "State of Georgia, 1776." (Laws 1799, Cobb's 1851 Digest, p. 959; Code 1863, § 86; Code 1868, § 81; Code 1873, § 86; Code 1882, § 86; Civil Code 1895, § 184; Civil Code 1910, § 213; Ga. L. 1914, p. 1247; Code 1933, § 40-701; Ga. L. 2001, p. 1, § 3.)

Cross references. — Duty of Secretary of State to keep great seal of state, § 45-13-20(1).

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 305 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62.

C.J.S. — 36A C.J.S., Flags, §§ 3,4. 81A C.J.S., States, §§ 79, 244.

50-3-31. Use and display; facsimile.

In addition to official documents which require that the great seal be affixed, the Governor may authorize the use and display of the great seal or a facsimile of the state emblem under such conditions as he may impose when there shall be demonstrated to his satisfaction that the intended use or display thereof is appropriate and legitimate and is not contrary to the state's interest in preserving the sanctity and dignity of the state seal and emblem and that the use or display will not otherwise violate Code Section 50-3-8 or 50-3-9. (Ga. L. 1979, p. 411, § 1.)

Cross references. — Display of great seal of state on state-owned motor pool vehicles, § 50-19-2.

OPINIONS OF THE ATTORNEY GENERAL

Use of seal prohibited. — The great seal of a textbook privately published and offered for sale. 1954-56 Op. Att'y Gen. p. 638.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Advertising, § 4. 35 Am. Jur. 2d, Flag, § 3 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 62.

C.J.S. — 36A C.J.S., Flags, §§ 3, 4. 81A C.J.S., States, § 79.

50-3-32. Authorized and unauthorized use or display.

(a) As used in this Code section, the term "election" means any primary election; run-off election, either primary or general; special election; general election; or recall election.

(b) Every constitutional officer; every official elected state wide; the executive head of every state department or agency, whether elected or appointed; each member of the General Assembly; and the executive director of each state authority shall be authorized to use or display the great seal or a facsimile of the state emblem for official state purposes and, in addition, each of the officials enumerated in this subsection who are elected officials shall be authorized to use or display the great seal or a facsimile of the state emblem on or in connection with any campaign poster, sign, or advertisement for election to any public office.

(c) Except as otherwise authorized by Code Section 50-3-31 or subsection (b) of this Code section, it shall be unlawful for any person, firm, corporation, or campaign committee to use or display the great seal or a facsimile of the state emblem on or in connection with any campaign poster, sign, or advertisement for election to any public office in such a manner as to falsely suggest or imply that the person on whose behalf the same is used

is at the time a holder of a public office for which a commission bearing said seal is used.

(d) Any person who violates any provision of subsection (c) of this Code section shall be guilty of a misdemeanor. (Code 1981, § 50-3-32, enacted by Ga. L. 1989, p. 1122, § 1.)

ARTICLE 3

OTHER STATE SYMBOLS

Editor's notes. — By resolution (Ga. L. 1984, p. 475), the General Assembly designated the Botanical Garden at the University of Georgia as the State Botanical Garden of Georgia.

By resolution (Ga. L. 1985, p. 562), the

General Assembly designated *The Atlas of Georgia* the official state atlas of Georgia.

By resolution (Ga. L. 1985, p. 747), the General Assembly designated the right whale as the official Georgia state marine mammal.

50-3-50. State bird.

The brown thrasher is designated as the official Georgia state bird. (Ga. L. 1970, p. 418.)

50-3-51. State game bird.

The bobwhite quail is designated as the official Georgia state game bird. (Ga. L. 1970, p. 418.)

50-3-52. State fish.

The largemouth bass is designated as the official Georgia state fish. (Ga. L. 1970, p. 846.)

50-3-53. State floral emblem.

The Cherokee rose is adopted as the floral emblem of the State of Georgia. (Ga. L. 1916, p. 1046.)

50-3-54. State wild flower.

The azalea is designated as the Georgia state wild flower. (Ga. L. 1979, p. 1387.)

50-3-55. Official tree.

The live oak is adopted as the official tree emblematic of the State of Georgia. (Ga. L. 1937, p. 2209.)

50-3-56. Official fossil.

The shark tooth is designated as the official Georgia state fossil. (Ga. L. 1976, p. 567.)

50-3-57. Official gem.

Quartz is designated as the official Georgia state gem. (Ga. L. 1976, p. 567.)

50-3-58. Official insect.

The honeybee is designated as the official Georgia state insect. (Ga. L. 1975, p. 927.)

50-3-59. Official mineral.

Staurolite is designated as the official Georgia state mineral. (Ga. L. 1976, p. 567.)

50-3-60. Official song.

The song "Georgia on My Mind" with lyrics by Mr. Stuart Gorrell and music by Mr. Hoagy Carmichael is designated as the official song of the State of Georgia.

Georgia on My Mind

Melodies bring memories
That linger in my heart
Make me think of Georgia
Why did we ever part?
Some sweet day when blossoms fall
And all the world's a song
I'll go back to Georgia
'Cause that's where I belong.
Georgia, Georgia, the whole day through
Just an old sweet song keeps Georgia on my mind.
Georgia, Georgia, a song of you
Comes as sweet and clear as moonlight through the pines.
Other arms reach out to me
Other eyes smile tenderly
Still in peaceful dreams I see
The road leads back to you.
Georgia, Georgia, no peace I find
Just an old sweet song keeps Georgia on my mind.

Use by State of Georgia governed by 1979 agreement with Peer International Corporation. Copyright 1930 by Peer International Corporation. Copyright renewed. Used by permission. (Ga. L. 1979, p. 1425.)

50-3-61. Official waltz.

The song "Our Georgia" is adopted as the official waltz of the State of Georgia. (Ga. L. 1951, p. 842.)

50-3-62. Official butterfly.

The tiger swallowtail is designated as the official Georgia state butterfly. (Code 1981, § 50-3-62, enacted by Ga. L. 1988, p. 853, § 1.)

50-3-63. Official reptile.

The gopher tortoise is designated as the official Georgia state reptile. (Code 1981, § 50-3-63, enacted by Ga. L. 1989, p. 297, § 1.)

50-3-64. Official historic drama.

(a) The drama, *The Reach of Song*, is designated as the official historic drama of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the historic drama and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-64, enacted by Ga. L. 1990, p. 157, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2004, p. 690, § 24.)

Code Commission notes. — Pursuant to § 1, was redesignated as Code Section 50-3-65. Code Section 28-9-5, in 1990, Code Section 50-3-64, as enacted by Ga. L. 1990, p. 1131,

50-3-65. Official vegetable.

The Vidalia Sweet Onion is designated as the official Georgia state vegetable. (Code 1981, § 50-3-65, enacted by Ga. L. 1990, p. 1131, § 1.)

Code Commission notes. — Pursuant to § 1, was redesignated as Code Section 50-3-65. Code Section 28-9-5, in 1990, Code Section 50-3-64, as enacted by Ga. L. 1990, p. 1131,

50-3-66. State theater.

The Springer Opera House is designated as the official Georgia state theater. (Code 1981, § 50-3-66, enacted by Ga. L. 1992, p. 1633, § 1.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L.

1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-67. Official state folk festival.

The Georgia Folk Festival is designated as the official Georgia state folk festival. (Code 1981, § 50-3-67, enacted by Ga. L. 1992, p. 2363, § 1.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L.

1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-68. Official 'Possum.

Pogo 'Possum, created by Walt Kelly, is adopted as the official Georgia State 'Possum. (Code 1981, § 50-3-68, enacted by Ga. L. 1992, p. 2391, § 9.)

Code Commission notes. — Ga. L. 1992, p. 1633, § 1; Ga. L. 1992, p. 2363, § 1; and Ga. L. 1992, p. 2391, § 9 all enacted a Code Section 50-3-66. Pursuant to Code Section 28-9-5, the Code section enacted by Ga. L.

1992, p. 2363, § 1 has been redesignated as Code Section 50-3-67 and the Code section enacted by Ga. L. 1992, p. 2391, § 9 has been redesignated as Code Section 50-3-68.

50-3-69. Official musical theatre.

(a) The “Peach State Summer Theatre” is designated as the official musical theatre of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Peach State Summer Theatre and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-69, enacted by Ga. L. 1993, p. 934, § 1; Ga. L. 2004, p. 690, § 25; Ga. L. 2006, p. 437, § 2/HB 343.)

Editor's notes. — Ga. L. 1993, p. 934, § 2, not codified by the General Assembly, provides: “The Jekyll Island Authority and the University System of Georgia are commended for the exemplary cooperative efforts in creating the Jekyll Island Musical Theatre Festival, and they are encouraged to continue to support and develop this excellent program.”

Ga. L. 2006, p. 437, § 1, not codified by

the General Assembly, provides: “WHEREAS, the partnership between Valdosta State University and the Jekyll Island Authority to produce the Jekyll Island Musical Theatre has been dissolved and Valdosta State University has moved its summer theatre program to the Valdosta State University campus as the Peach State Summer Theatre; and

“WHEREAS, the State of Georgia has rec-

ognized the importance of tourism to the economic and cultural well-being of its people through the establishment of the Department of Economic Development; and

“WHEREAS, the enhancement of tourist attractions in Georgia, which would encourage tourists to extend their stay in Georgia, benefits the state; and

“WHEREAS, many groups in the state are working to improve the quality of artistic and recreational experiences for Georgia residents and for out-of-state tourists as well; and

“WHEREAS, the existence of musical theatre is a vital component of the artistic and cultural life of Georgia; and Georgia is committed to encourage and support artists’ activities of the highest quality for the enjoyment and enrichment of the citizens; and

“WHEREAS, Valdosta State University, a unit of the University System of Georgia, has received a Regents’ Award for Excellence in the Theatre and has a 15 year history of producing the Jekyll Island Musical Theatre Festival, a professional repertory musical theatre company; and

“WHEREAS, Valdosta State University is moving its summer theatre to Valdosta, Georgia, and will continue to present musical theatre of outstanding artistry to residents and tourists; and

“WHEREAS, that summer theatre is named the Peach State Summer Theatre in celebration of the State of Georgia.”

50-3-70. Official state fruit.

The peach is designated as the official Georgia state fruit. (Code 1981, § 50-3-70, enacted by Ga. L. 1995, p. 362, § 1.)

50-3-71. Poultry Capital of the World.

The State of Georgia is designated as the Poultry Capital of the World. (Code 1981, § 50-3-71, enacted by Ga. L. 1995, p. 365, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1995, p. 365, was

redesignated as Code Section 50-3-71, since Code Section 50-3-70 had already been enacted by Ga. L. 1995, p. 362.

50-3-72. State crop; official state peanut monument.

(a) The peanut is designated as the official Georgia state crop.

(b) The peanut monument located in Turner County on the west side of Interstate Highway 75 within the limits of the City of Ashburn is designated the official state peanut monument. (Code 1981, § 50-3-72, enacted by Ga. L. 1995, p. 934, § 1; Ga. L. 1998, p. 588, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1995, p. 934, was redesignated as Code Section 50-3-72, since

Code Section 50-3-70 had already been enacted by Ga. L. 1995, p. 362 and Ga. L. 1995, p. 365, the latter of which enactments was redesignated as Code Section 50-3-71.

50-3-73. Official folk dance.

Square dancing is designated as the official Georgia folk dance. (Code 1981, § 50-3-73, enacted by Ga. L. 1996, p. 662, § 1.)

50-3-74. Official railroad museum.

(a) The Central of Georgia Railroad Shops Complex in Savannah, Georgia, is designated as the official railroad museum of the State of Georgia.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Central of Georgia Railroad Shops Complex and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-74, enacted by Ga. L. 1996, p. 801, § 1; Ga. L. 2004, p. 690, § 26.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, this Code section, originally designated as Code Section 50-3-70 by Ga. L. 1996, p. 801, § 1, was redesignated as Code Section 50-3-74, since a Code Section 50-3-70 already existed.

50-3-75. Official beef barbecue championship cookoff; official pork barbecue championship cookoff.

(a) The Hawkinsville Civitan Club's "Shoot the Bull" barbecue championship is designated as the official state beef barbecue championship cookoff.

(b) The Dooly County Chamber of Commerce's "Slosheye Trail Big Pig Jig" is designated as the official state pork barbecue championship cookoff. (Code 1981, § 50-3-75, enacted by Ga. L. 1997, p. 588, § 1.)

50-3-76. Official tartan.

(a) The Georgia tartan is designated as the official tartan of Georgia.

(b) The Georgia tartan is that tartan accredited in Certificate Number 96027 by the Council of the Scottish Tartans Society of Scotland and is described as follows: 72 green, 4 black, 4 green, 4 black, 6 green, 24 black, 20 azure, 40 red. (Code 1981, § 50-3-76, enacted by Ga. L. 1997, p. 1557, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 50-3-75, was redesignated as Code Section 50-3-76.

50-3-77. Official state transportation history museum designated; maximization of advertising programs.

(a) The Southeastern Railway Museum in Duluth, Georgia, is designated as the official state transportation history museum.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of the Southeastern Railway Museum and to visit this state for tourism purposes. (Code 1981, § 50-3-77, enacted by Ga. L. 2000, p. 766, § 1; Ga. L. 2004, p. 690, § 27.)

Cross references. — Railroad companies, Ch. 8, T. 46.

50-3-78. State official prepared food.

Grits are recognized as the official prepared food of the State of Georgia. (Code 1981, § 50-3-78, enacted by Ga. L. 2002, p. 453, § 2.)

50-3-79. Official center for character education.

The Mighty Eighth Air Force Heritage Museum is designated as an official State of Georgia center for character education. (Code 1981, § 50-3-79, enacted by Ga. L. 2003, p. 501, § 1.)

Editor's notes. — Ga. L. 2004, p. 156, § 1, which enacted new Code Section 50-3-79 which was identical to Code Section 50-3-80, was treated as having reenacted Code Section 50-3-80.

Cross references. — Comprehensive character education program, § 20-2-145.

50-3-80. Official Frontier and Southeastern Indian Interpretive Center.

The Funk Heritage/Bennett Center at Reinhardt College in Waleska, Georgia, is designated as Georgia's official Frontier and Southeastern Indian Interpretive Center. (Code 1981, § 50-3-80, enacted by Ga. L. 2003, p. 501, § 1; Ga. L. 2004, p. 156, § 1.)

Editor's notes. — Ga. L. 2004, p. 156, § 1, which enacted a new Code Section 50-3-79 which was identical to this Code section, was

treated as having reenacted this Code section.

50-3-81. Official amphibian.

The green tree frog is designated as the official Georgia state amphibian. (Code 1981, § 50-3-81, enacted by Ga. L. 2005, p. 316, § 2/SB 41.)

Editor's notes. — Ga. L. 2005, p. 316, § 1, not codified by the General Assembly, provides that: "The General Assembly finds and determines that:

"(1) The green tree frog's (*Hyla cinerea*) habitat includes nearly all of Georgia, so virtually all Georgians are familiar with it or have a great opportunity to see its conspicuous bright color and striped markings;

"(2) Large aggregations of calling males create conspicuous and characteristic nighttime choruses during the warm months;

"(3) All other major groups of wildlife, including mammals, birds, reptiles, fish, insects, trees, and wildflowers, are represented by state symbols, and amphibians are a crucial link in the state's ecosystem;

"(4) Official recognition of a state amphibian could help correct the false impression that amphibians and reptiles are one and the same;

"(5) The State of Georgia is home to 85 different species of amphibians, which gives

it the distinction of having the second greatest amphibian diversity of any state in the United States behind North Carolina;

"(6) Well-publicized world-wide decline of amphibians has become a major conservation concern and the exclusion of amphibians from our official state symbols list could possibly contribute to a sense of complacency towards this loss of biota;

"(7) Amphibians are excellent indicators of water and air quality due to their porous skin and habit of moving between aquatic and terrestrial habitats, and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in localized areas; and

"(8) Establishing an official state amphibian is necessary to fully recognize our diverse wildlife and the green tree frog is deserving of the attention and appreciation of the citizens of this state by designation as the official state amphibian."

50-3-82. Official cold water game fish.

The Southern Appalachian brook trout is designated as the official Georgia cold water game fish. (Code 1981, § 50-3-82, enacted by Ga. L. 2006, p. 678, § 2/HB 1211.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-82, as enacted by Ga. L. 2006, p. 823, § 1, was redesignated as Code Section 50-3-84. Code Sections 50-3-82 and 50-3-83 were enacted by Ga. L. 2006, p. 678, §§ 2, 3.

Editor's notes. — Ga. L. 2006, p. 678, § 1, not codified by the General Assembly, provides that: "(a) The General Assembly finds and determines that:

"(1) The Southern Appalachian brook trout is one of nature's most exquisite forms of art with its brilliant colors and intricate patterns;

"(2) The Southern Appalachian brook trout makes its home in the clean, cold, crystal clear waters of the North Georgia mountains and is Georgia's only native Salmonid species;

"(3) Throughout our state's history, our citizens have prized the Southern Appalachian brook trout for its tasty flesh and plentiful numbers;

"(4) Over the past century, however, extensive logging has decimated brook trout

waters through sedimentation and erosion of habitat and, when nonnative trout were stocked to replace lost populations, the brook trout could not compete and were driven to higher elevation streams where they remain today;

"(5) The brook trout is also subject to harm today from acid rain that is deposited in the high mountains and ridges of our state from air pollution;

"(6) The protection of the Southern Appalachian brook trout has become a major conservation concern and the inclusion of the Southern Appalachian brook trout in our official state symbols list could possibly contribute to the efforts to protect this magnificent state natural resource;

"(7) The Southern Appalachian brook trout is an excellent indicator of water and air quality and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in our watersheds; and

"(8) Establishing an official state cold water game fish is necessary to fully recognize

our diverse wildlife and the Southern Appalachian brook trout is deserving of the attention and appreciation of the citizens of this state by designation as the official state cold water fish.

“(b) The General Assembly further finds and declares as follows:

“(1) The red drum, also known as redfish, spottail bass, and channel bass, is highly prized by Georgia’s citizens as a worthy adversary on the end of a fishing line and an epicurean delight on the table;

“(2) A visually stunning specimen of marine life, the red drum varies in color from a pale pink to a deep bronze. The false-eye spot found near the tail is a unique characteristic as is the powder blue markings on the fringe of the tail;

“(3) The red drum is found from the smallest tidal creek to the crashing surf on lonely barrier islands to the depths of the Atlantic Ocean and thus is symbolic of the link between the diversity of habitats found along Georgia’s coast;

“(4) A long-lived species, red drum are known to reach an age in excess of 50 years. A single female may produce billions of eggs over a lifetime;

“(5) Prior to the mid-1980’s, Georgia’s red drum population was in jeopardy from the over harvesting of immature fish and adults;

“(6) State biologists and concerned anglers saw the need for conservation of this magnificent species and advocated for the first harvest regulations implemented by the General Assembly in 1986;

“(7) Year in and year out, red drum rank among the top three species caught and kept by Georgia salt-water anglers. Georgia’s human population continues to increase and the number of salt-water anglers seeking red drum increase along with it;

“(8) Because of the red drum’s importance to Georgia anglers, the landmark Peach State Reds Initiative will investigate the feasibility of using hatchery reared red drum as a fishery management tool while providing additional much needed science based information;

“(9) A survey of the Coastal Conservation Association of Georgia’s membership revealed that nearly 50 percent were in favor of the red drum becoming Georgia’s state salt-water fish; and

“(10) Establishing an official state salt-water fish is necessary to fully recognize the importance of our coastal fisheries to our state, and the red drum is deserving of the attention and appreciation of the citizens of this state by designation as the official state salt-water fish.”

50-3-83. Official salt-water fish.

The red drum is designated as the official Georgia salt-water fish. (Code 1981, § 50-3-83, enacted by Ga. L. 2006, p. 678, § 3/HB 1211.)

Editor’s notes. — Ga. L. 2006, p. 678, § 1, not codified by the General Assembly, provides that: “(a) The General Assembly finds and determines that:

“(1) The Southern Appalachian brook trout is one of nature’s most exquisite forms of art with its brilliant colors and intricate patterns;

“(2) The Southern Appalachian brook trout makes its home in the clean, cold, crystal clear waters of the North Georgia mountains and is Georgia’s only native Salmonid species;

“(3) Throughout our state’s history, our citizens have prized the Southern Appalachian brook trout for its tasty flesh and plentiful numbers;

“(4) Over the past century, however, extensive logging has decimated brook trout waters through sedimentation and erosion of habitat and, when nonnative trout were stocked to replace lost populations, the brook trout could not compete and were driven to higher elevation streams where they remain today;

“(5) The brook trout is also subject to harm today from acid rain that is deposited in the high mountains and ridges of our state from air pollution;

“(6) The protection of the Southern Appalachian brook trout has become a major conservation concern and the inclusion of the Southern Appalachian brook trout in our official state symbols list could possibly

contribute to the efforts to protect this magnificent state natural resource;

“(7) The Southern Appalachian brook trout is an excellent indicator of water and air quality and declines in their numbers can serve as early warning signs that environmental conditions may be deteriorating in our watersheds; and

“(8) Establishing an official state cold water game fish is necessary to fully recognize our diverse wildlife and the Southern Appalachian brook trout is deserving of the attention and appreciation of the citizens of this state by designation as the official state cold water fish.

“(b) The General Assembly further finds and declares as follows:

“(1) The red drum, also known as redfish, spottail bass, and channel bass, is highly prized by Georgia’s citizens as a worthy adversary on the end of a fishing line and an epicurean delight on the table;

“(2) A visually stunning specimen of marine life, the red drum varies in color from a pale pink to a deep bronze. The false-eye spot found near the tail is a unique characteristic as is the powder blue markings on the fringe of the tail;

“(3) The red drum is found from the smallest tidal creek to the crashing surf on lonely barrier islands to the depths of the Atlantic Ocean and thus is symbolic of the link between the diversity of habitats found along Georgia’s coast;

“(4) A long-lived species, red drum are known to reach an age in excess of 50 years.

A single female may produce billions of eggs over a lifetime;

“(5) Prior to the mid-1980’s, Georgia’s red drum population was in jeopardy from the over harvesting of immature fish and adults;

“(6) State biologists and concerned anglers saw the need for conservation of this magnificent species and advocated for the first harvest regulations implemented by the General Assembly in 1986;

“(7) Year in and year out, red drum rank among the top three species caught and kept by Georgia salt-water anglers. Georgia’s human population continues to increase and the number of salt-water anglers seeking red drum increase along with it;

“(8) Because of the red drum’s importance to Georgia anglers, the landmark Peach State Reds Initiative will investigate the feasibility of using hatchery reared red drum as a fishery management tool while providing additional much needed science based information;

“(9) A survey of the Coastal Conservation Association of Georgia’s membership revealed that nearly 50 percent were in favor of the red drum becoming Georgia’s state salt-water fish; and

“(10) Establishing an official state salt-water fish is necessary to fully recognize the importance of our coastal fisheries to our state, and the red drum is deserving of the attention and appreciation of the citizens of this state by designation as the official state salt-water fish.”

50-3-84. Official designation of First Mural City.

(a) The City of Colquitt is designated as Georgia’s First Mural City.

(b) The Department of Economic Development and other public agencies and leaders in the tourism industry are encouraged to work together to maximize advertising programs which permit citizens of other states and nations to learn of Georgia’s First Mural City and to visit the State of Georgia for tourism purposes. (Code 1981, § 50-3-84, enacted by Ga. L. 2006, p. 823, § 1/SB 484.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, Code Section 50-3-82, as enacted by Ga. L. 2006, p. 823,

§ 1, was redesignated as Code Section 50-3-84. Code Sections 50-3-82 and 50-3-83 were enacted by Ga. L. 2006, p. 678, §§ 2, 3.

50-3-85. Official Georgia historical civil rights museum.

The Ralph Mark Gilbert Civil Rights Museum is designated an official Georgia historical civil rights museum. (Code 1981, § 50-3-85, enacted by Ga. L. 2009, p. 207, § 3/SB 27.)

Effective date. — This Code section became effective July 1, 2009.

Editor's notes. — Ga. L. 2009, p. 207, § 1, not codified by the General Assembly, provides that: "WHEREAS, the Ralph Mark Gilbert Civil Rights Museum, recently named 'Georgia's Best New History Museum' by the Georgia Journal, is named in honor of the late Dr. Ralph Mark Gilbert. The father of Savannah's modern day Civil Rights Movement and fearless National Association for the Advancement of Colored People (NAACP) leader was known for much more than his outspoken campaigns for civil rights. He was a nationally known orator, pulpiteer, and playwright, producing religious dramas, known as passion plays, throughout the country; and

"WHEREAS, Dr. Gilbert served as pastor of historic First African Baptist Church on Franklin Square in Savannah for 16 years. In 1942, he reorganized the Savannah Branch NAACP, served as president for eight years and convened the first state conference. Branches from Savannah, Brunswick,

Dublin, Atlanta, Columbus, Macon, Albany and three other branches whose identities are uncertain, attended and elected Rev. Ralph Mark Gilbert president. Under his courageous leadership, more than forty NAACP branches were organized in Georgia by 1950; and

"WHEREAS, Georgia's best new history museum chronicles the civil rights struggle of Georgia's oldest African American community from slavery to the present. Three floors of handsome photographic and interactive exhibits, includes an NAACP Organization exhibit, a fiber optic map of 87 significant civil rights sites/events, a lunch counter where 'sit ins' occurred, segregation exhibits, and video presentation are all part of the continuous education of the public on the history of the civil rights struggle in Savannah and Georgia. The museum is located in historic Savannah in a five level building that was erected in 1914 as the Wage Earners Savings and Loan Bank for Black Savannahians, the largest Black bank in the country at that time."

ARTICLE 4**OFFICIAL STATE LANGUAGE****50-3-100. English designated as official language; constitutional rights not denied; authorization for documents and forms in other languages; exceptions.**

(a) The English language is designated as the official language of the State of Georgia. The official language shall be the language used for each public record, as defined in Code Section 50-18-70, and each public meeting, as defined in Code Section 50-14-1, and for official Acts of the State of Georgia, including those governmental documents, records, meetings, actions, or policies which are enforceable with the full weight and authority of the State of Georgia.

(b) This Code section shall not be construed in any way to deny a person's rights under the Constitution of Georgia or the Constitution of the

United States or any laws, statutes, or regulations of the United States or of the State of Georgia as a result of that person's inability to communicate in the official language.

(c) State agencies, counties, municipal corporations, and political subdivisions of this state are authorized to use or to print official documents and forms in languages other than the official language, at the discretion of their governing authorities. Documents filed or recorded with a state agency or with the clerk of a county, municipal corporation, or political subdivision must be in the official language or, if the original document is in a language other than the official language, an English translation of the document must be simultaneously filed.

(d) The provisions of subsection (a) of this Code section shall not apply:

(1) When in conflict with federal law;

(2) When the public safety, health, or justice requires the use of other languages;

(3) To instruction designed to teach the speaking, reading, or writing of foreign languages;

(4) To instruction designed to aid students with limited English proficiency in their transition and integration into the education system of the state; and

(5) To the promotion of international commerce, tourism, sporting events, or cultural events. (Code 1981, § 50-3-100, enacted by Ga. L. 1996, p. 1631, § 1; Ga. L. 2002, p. 415, § 50.)

Cross references. — Program for limited-English-proficient students, § 20-2-156. Municipalities prohibited from restricting the use of language other than English on signs for privately owned businesses, § 36-35-6.1. Examinations to be conducted in English, § 43-34-26.

Editor's notes. — By resolution (Ga. L. 1986, p. 529), the General Assembly designated the English language as the official language of the State of Georgia.

Law reviews. — For review of 1996 state government legislation, see 13 Ga. U.L. Rev. 320 (1996).

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Resolution (Ga. L. 1986, p. 529) adopting English as the official language of the State of Georgia has the force and effect of law. 1995 Op. Att'y Gen. No. U95-16.

RESEARCH REFERENCES

Am. Jur. 2d. — 17 Am. Jur. 2d, Consumer and Borrower Protection, § 16.

C.J.S. — 3A C.J.S., Aliens, § 1788.

CHAPTER 4

ORGANIZATION OF EXECUTIVE BRANCH GENERALLY

Sec.		Sec.	
50-4-1.	Definitions.	50-4-5.	Contract by executive branch unit for privatization; notice.
50-4-2.	Internal structure of departments.	50-4-6.	Contract between state agency and private provider for operation of institution under control of agency; feasibility study.
50-4-3.	Assignment for administrative purposes only; authorities to retain separate identities.	50-4-7.	State service delivery regions.
50-4-4.	Advisory councils.		

50-4-1. Definitions.

Unless otherwise required by context, as used in this Code when related to the executive branch of state government, the term:

(1) “Administrative” means those functions related to the specific implementation of general policies.

(2) “Agency” means any officer, department, division, bureau, board, commission, or agency in the executive branch of state government.

(3) “Constitution” means the Constitution of Georgia.

(4) “Department” means a principal, functional, and administrative entity and its divisions within the executive branch of state government provided for by the “Executive Reorganization Act of 1972” or by any subsequent enactment except when used in connection with the name of an agency existing before July 1, 1972.

(5) “Department head” means a director, commission, board, commissioner, or constitutional officer or such other official in charge of a department.

(6) “Function” means a duty, power, or program exercised by or assigned to an agency, whether or not specifically provided for by law, including budgeted positions and personnel relating to the performance of such function unless otherwise provided.

(7) “Policy” or “policy making” means those functions related to establishing the general direction which programs of an agency shall take.

(8) “Unit” means an internal subdivision of an agency, created by statute or by administrative action, including a division, bureau, section, or department or an agency assigned to a department for administrative purposes only as provided in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 1C; Ga. L. 1983, p. 3, § 66.)

JUDICIAL DECISIONS

Cited in *Bliss v. Cobb County*, 599 F. Supp. 233 (N.D. Ga. 1984); *Phillips v. Hawthorne*, 269 Ga. 9, 494 S.E.2d 656 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 1 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 3, 61.

50-4-2. Internal structure of departments.

For its internal structure, each department shall adhere to the following standard terms:

- (1) The principal unit of a department is a division. Each division shall be headed by a director or deputy, except as otherwise provided; and
- (2) The principal unit of a division is a section. Each section shall be headed by a supervisor. (Ga. L. 1972, p. 1015, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 1, 7. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 61.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 30 et seq. 81A C.J.S., States, §§ 73, 74, 157 et seq.

50-4-3. Assignment for administrative purposes only; authorities to retain separate identities.

(a) An agency assigned to a department for administrative purposes only shall:

- (1) Exercise its quasi-judicial, rule-making, licensing, or policy-making functions independently of the department and without approval or control of the department;
- (2) Prepare its budget, if any, and submit its budgetary requests, if any, through the department; and
- (3) Hire its own personnel if authorized by the Constitution of this state or by statute or if the General Assembly provides or authorizes the expenditure of funds therefor.

(b) The department to which an agency is assigned for administrative purposes only shall:

- (1) Provide record keeping, reporting, and related administrative and clerical functions for the agency;

(2) Disseminate for the agency required notices, rules, or orders adopted, amended, or repealed by the agency;

(3) Provide staff for the agency subject to paragraph (3) of subsection (a) of this Code section; and

(4) Include in the departmental budget the agency's budgetary request, if any, as a separate part of the budget and exactly as prepared and submitted to the department by the agency.

(c) Whenever any authority is assigned for administrative purposes, it means only that the state department through which the authority deals with the state shall be that department to which the authority is assigned. Any authority created by state law shall retain its separate identity as an instrumentality of the state and a public corporation. The department to which an authority is assigned is authorized, only with the approval of the authority, to perform for such authority any or all of the functions set forth in subsection (b) of this Code section. (Ga. L. 1972, p. 1015, § 3.)

JUDICIAL DECISIONS

Cited in *Fouche v. Jekyll Island-State Park*, 581 F. Supp. 1374 (N.D. Ga. 1984); *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984); *Auth.*, 713 F.2d 1518 (11th Cir. 1983);

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Hiring and discharging employees. — State Board of Pardons and Paroles may hire and discharge employees required in performance of the board's quasi-judicial functions. 1975 Op. Att'y Gen. No. 75-35.

Department of Corrections without authority to assign staff to board. — Since the State Board of Pardons and Paroles has statutory authority to hire the board's own personnel to assist the board in carrying out the board's quasi-judicial functions, the Department of Offender Rehabilitation (now Corrections) is not authorized to assign staff to the State Board of Pardons and Paroles as pre-parole investigators. 1975 Op. Att'y Gen. No. 75-35.

Staff to be provided to Children's Trust Fund Commission. — The Department of Human Resources is authorized to provide staff and existing departmental resources to the State Children's Trust Fund Commission whenever practicable. When it is not practicable for the department or other participating departments to provide staff or resources, then the commission, with the approval of the Governor, is authorized to

employ and discharge the commission's own personnel. 1990 Op. Att'y Gen. No. 90-35.

Transfer of advisory council on vocational education by Governor. — Governor may not transfer advisory council on vocational education from Department of Education for fiscal and administrative purposes to the Office of Planning and Budget. 1974 Op. Att'y Gen. No. U74-61.

Altering fiscal agent for advisory council. — The function of fiscal agent for the advisory council on vocational education is a responsibility accruing to the Department of Education and alterable only by action of the General Assembly. 1974 Op. Att'y Gen. No. U74-61.

Preparation of affirmative action programs. — Department of Public Safety is not responsible for preparing affirmative action programs for agencies assigned to the department for administrative purposes only. The essence of assignment is to benefit the assigned agency, which is normally smaller than the agency to which it is assigned. The assigned agency gets the benefit of the larger agency's financial and administrative staff,

but does not lose any of the agency's independent authority or control with regard to carrying out the agency's duties. 1980 Op. Att'y Gen. No. 80-147.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 61. Law and Procedure, § 10 et seq. 81A C.J.S., States, §§ 73, 74, 157 et seq.
C.J.S. — 73 C.J.S., Public Administrative

50-4-4. Advisory councils.

A department head or the Governor may create advisory councils. Any other official or agency of the executive branch of state government may also create advisory councils but only if federal laws or regulations require that the official or agency create the advisory council as a condition to the receipt of federal funds. Advisory councils may be created only for the purpose of acting in an advisory capacity. Unless otherwise provided by law, any such advisory council shall have a definite termination date in the instrument creating it, such date not to extend beyond the term of the Governor holding office at the time of the creation of the council. (Ga. L. 1972, p. 1015, § 28.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 42 et seq., 139, 144, 230 et seq., 241. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 24. Law and Procedure, §§ 10 et seq., 32 et seq. 81A C.J.S., States, §§ 73, 74, 145 et seq., 254 et seq.
C.J.S. — 73 C.J.S., Public Administrative 73A C.J.S., Public Administrative Law and Procedure, § 295 et seq.

50-4-5. Contract by executive branch unit for privatization; notice.

(a) As used in this Code section, the term:

(1) "Institution" means any physical facility operated by the executive branch of state government which is used in the delivery of any governmental services and which has an annual operating budget in excess of \$1 million.

(2) "Program" means any program operated by the executive branch of state government at a cost in excess of \$5 million per year.

(b) Before any department, agency, authority, or other unit of the executive branch enters into any contract to privatize the operation of any institution or program, the department, agency, authority, or other unit shall give written notice of the proposed privatization to the President of the Senate, the Speaker of the House, and the appropriate legislative overview committee, if any. Such notice shall be given at least 60 days prior to entering into the contract to privatize the operation of the institution or program.

(c) This Code section shall not apply with respect to any privatization effort begun prior to July 1, 1997, or to the renewal of any contract or agreement for the privatization of an institution or program. (Code 1981, § 50-4-5, enacted by Ga. L. 1997, p. 691, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, “July 1, 1997,” was substituted for “the effective date of this Code section” in subsection (c).

RESEARCH REFERENCES

ALR. — Privatization of governmental services by state or local governmental agency, 65 ALR5th 1.

50-4-6. Contract between state agency and private provider for operation of institution under control of agency; feasibility study.

(a) As used in this Code section, the term “institution” means any physical facility operated by the executive branch of state government which is used in the delivery of any governmental services and which has an annual operating budget in excess of \$1 million.

(b) No contract between a state agency and a private provider or vendor for the operation of all or part of an institution under the control of the agency shall be entered into unless it is preceded by a feasibility study which makes the following findings:

(1) That the state employees who are employed in the operation of the institution prior to the transfer of operation to the private provider or vendor will have a reasonable opportunity to apply for continued employment either with the state or with the private provider or vendor; or

(2) That any state employees who are displaced or discharged from employment as a result of the transfer of operation to the private provider or vendor will be eligible for participation in an employment assistance program to be implemented by the state and coordinated by the Department of Labor and which shall be designed to assist such persons in securing other employment. The program shall include such educational programs, vocational skills programs, apprenticeship training programs, on-the-job training programs, job search and job development programs, and other occupational training or retraining programs as are determined by the Department of Labor to best promote the goals of employability and employment of such persons. (Code 1981, § 50-4-6, enacted by Ga. L. 1997, p. 1542, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, this Code section, enacted as Code Section 50-4-5, was redesignated as Code Section 50-4-6.

50-4-7. State service delivery regions.

(a) For the purpose of delivering state services to local units of government and citizens and for the purpose of establishing state agency regional boundaries, there are created 12 state service delivery regions as follows:

(1) State Service Delivery Region 1 shall be composed of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield counties;

(2) State Service Delivery Region 2 shall be composed of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart, Lumpkin, Rabun, Stephens, Towns, Union, and White counties;

(3) State Service Delivery Region 3 shall be composed of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale counties;

(4) State Service Delivery Region 4 shall be composed of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson counties;

(5) State Service Delivery Region 5 shall be composed of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton counties;

(6) State Service Delivery Region 6 shall be composed of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson counties;

(7) State Service Delivery Region 7 shall be composed of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes counties;

(8) State Service Delivery Region 8 shall be composed of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster counties;

(9) State Service Delivery Region 9 shall be composed of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox counties;

(10) State Service Delivery Region 10 shall be composed of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth counties;

(11) State Service Delivery Region 11 shall be composed of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton, Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware counties; and

(12) State Service Delivery Region 12 shall be composed of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven counties.

(b) This Code section shall not apply to or affect health districts or mental health districts. (Code 1981, § 50-4-7, enacted by Ga. L. 1998, p. 1230, § 1; Ga. L. 1999, p. 789, § 3; Ga. L. 2005, p. 143, § 1/SB 144.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “McIntosh” was substituted for “Mcintosh” in paragraph (a)(12).

CHAPTER 5

DEPARTMENT OF ADMINISTRATIVE SERVICES

Article 1

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| Sec. | | | employees of certain county boards and departments. |
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| 50-5-2 through 50-5-11. | [Repealed]. | 50-5-53. | Authorization to employ assistants, fix salaries, and make assignments. |
| 50-5-12. | Formulation of self-insurance program for workers' compensation for state employees; return to work program. | 50-5-54. | Rules and regulations to be made and published. |
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50-5-30 through 50-5-39. [Repealed].

Article 3

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GENERAL AUTHORITY, DUTIES, AND PROCEDURE

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- 50-5-66. Department to compile and consolidate all estimates.
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- 50-5-71. Emergency purchases authorized; report of circumstances.
- 50-5-72. Construction and public works contracts conducted by department; exceptions.
- 50-5-73. Goods and services to be obtained from correctional industries when certified as available.
- 50-5-74. Goods and services to be obtained from sheltered workshops and training centers when certified available; standards for certification of availability [Repealed].
- 50-5-75. Lease or construction of warehouse space authorized.
- 50-5-76. All tax stamps, tags, and paraphernalia evidencing the payment of tax to be purchased by department; requisition and payment.
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- 50-5-78. Financial interest of department personnel in contracts; acceptance of benefits from contractors; penalty; removal from office.
- 50-5-79. Purchase contracts contrary to part void and officers personally liable.
- 50-5-80. Unlawful to use resources or methods established pursuant to this article to obtain anything of value for personal benefit or gain; penalties for violators; applicability.
- 50-5-81. Unlawful for agencies or subdivisions to purchase other than United States produced beef; exceptions; penalty.
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- 50-5-83. Definitions; requirements for state purchasing card program.
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PART 2

LOCAL POLITICAL SUBDIVISION PURCHASES

- 50-5-100. Local political subdivision purchases through state authorized.
- 50-5-101. Notice to department; establishment of uniform standard specifications; report of annual requirements.
- 50-5-102. Competitive bidding procedure; bidder information; establishment of regulations and standards.
- 50-5-103. Purchase of motor vehicles, material, equipment, or supplies in name of state; procedure.

PART 3

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- 50-5-120. Short title.
- 50-5-121. Definitions.

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- 50-5-122. Legislative intent.
 50-5-123. Creation of advisory council; membership; meetings; chairman; executive director.
 50-5-124. Reports required of advisory council.

PART 4

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DEVELOPMENT

- 50-5-130. Purpose.
 50-5-131. Definitions.
 50-5-132. Eligibility and procedures for certification; appeal of denial.
 50-5-133. Fraud in certification process; penalty; effect of multiple violations.

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STATE USE COUNCIL

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 50-5-137. Participation of certified community based rehabilitation programs.

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- 50-5-138. Procurement of contracts with central nonprofit agencies; fees; cancellation or modification; existing contracts grandfathered.

Article 4

Disposition of Surplus Property

- 50-5-140. Department to request lists of surplus property.
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 50-5-146. Penalty.

Article 5

Communication Services

- 50-5-160 through 50-5-202. [Repealed].

Cross references. — Powers and duties of Department of Administrative Services regarding transportation services for officers and employees of state, Ch. 19, T. 50. Juvenile Court forms, Uniform Rules for the

Juvenile Courts of Georgia, Rule 3.8. Maintenance by Juvenile Court of prescribed forms, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.8(c).

ARTICLE 1

GENERAL PROVISIONS

50-5-1. Department created; commissioner appointed.

There is created a Department of Administrative Services. The department head is the commissioner. The commissioner shall be appointed by the Governor by and with the advice and consent of the Senate. The commissioner shall serve at the pleasure of the Governor and shall receive a salary to be set by the Governor. (Ga. L. 1972, p. 1015, § 401; Ga. L. 1999, p. 910, § 6; Ga. L. 1999, p. 1213, § 9.)

Cross references. — Power of commissioner to purchase liability insurance for public officers in regard to personal liability for damages arising out of performance of their duties, § 45-9-4.

Editor's notes. — Ga. L. 1999, p. 910, § 6, amended this Code section. However, that amendment has been treated as superseded by Ga. L. 1999, p. 1213, § 9.

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Department of Administrative Services is the state manager for administrative aspects of the workers' compensation program and, as such, is the agent for each individual department or instrumentality in its relations with the State Board of Workers' Compensation. 1980 Op. Att'y Gen. No. 80-55.

Penalty assessable against department for failure to file timely injury reports. — State

Board of Workers' Compensation may legally assess a penalty against the Department of Administrative Services as the agent for other departments, instrumentalities, and authorities of the state if there is a refusal or willful neglect to file timely reports of injuries required by former Code 1933, § 114-716 (see O.C.G.A. § 34-9-12). 1980 Op. Att'y Gen. No. 80-55.

50-5-2 through 50-5-9.

Reserved. Repealed by Ga. L. 1993, p. 1402, § 1, effective July 1, 1993.

Editor's notes. — Code Sections 50-5-2 through 50-5-9, relating to the fiscal division, the director thereof, and warrants for payment of state government expenses, have

been repealed and reenacted as Code Sections 50-5A-1 through 50-5A-8, relating to the Office of Treasury and Fiscal Services.

50-5-10 and 50-5-11.

Reserved. Repealed by Ga. L. 2000, p. 249, § 3, effective July 1, 2000.

Editor's notes. — Code Sections 50-5-10 and 50-5-11, relating to the Electronic Data Processing-Printing Committee and transfer of functions to the Department of Adminis-

trative Services, respectively, were based on Ga. L. 1972, p. 1015, §§ 4, 407; Ga. L. 1985, p. 708, § 21; Ga. L. 1986, p. 855, § 27.

50-5-12. Formulation of self-insurance program for workers' compensation for state employees; return to work program.

The Department of Administrative Services shall formulate and initiate a sound program of self-insurance for workers' compensation benefits for all employees of the state, including employees of authorities. In formulating the self-insurance program, the department is directed to establish a return to work program that promotes the return of an employee to employment by creating transitional employment prior to full recovery by providing temporary assignments for an employee that are meaningful and medically approved until the employee can return to his or her regularly assigned duties. If an agency or authority does not allow an employee to engage in transitional employment under the return to work program, the number of authorized positions in the budget for the agency or authority shall be decreased by the number of employees collecting workers' compensation not engaged in return to work employment for whom return to work plans

have been developed. (Ga. L. 1969, p. 234, § 1; Ga. L. 1972, p. 1015, § 406; Ga. L. 2008, p. 245, § 5/SB 425.)

The 2008 amendment, effective July 1, 2008, added the last two sentences.

Cross references. — Group self-insurance

programs for workers' compensation benefits generally; § 34-9-150 et seq.

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Administration of program. — Director of department (now commissioner of administrative services) has authority to determine and prescribe how the state workers' compensation self-insurance program will be administered. 1969 Op. Att'y Gen. No. 69-477.

Payment of monetary supplement. — Authority may pay its employees a monetary supplement to workers' compensation payments received by such employees under the

state self-insurance program. 1974 Op. Att'y Gen. No. U74-76.

Access to claimant's file. — Investigators employed by the Department of Administrative Services may legally have access to a state department's personnel file on a claimant for purposes of administering or defending a workers' compensation claim against that department. 1980 Op. Att'y Gen. No. 80-137.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 241. 82 Am. Jur. 2d, Workers' Compensation, §§ 1 et seq., 47, 155.

C.J.S. — 81 C.J.S., States, §§ 224, 225, 256. 99 C.J.S., Workmen's Compensation, §§ 1 et seq., 230 et seq.

ALR. — Workmen's compensation: power of commission to make award against self-insurer, 13 ALR 1385.

Constitutionality of retroactive statute providing compensation for death in service of state, 28 ALR 1100.

50-5-13. Extent, premiums, deductibles, benefit amounts, reserves, and excess coverage for self-insurance program; incentive programs authorized; deduction of unpaid amounts.

The department shall determine the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the premiums to be charged and any deductibles to be paid by agencies and authorities, the amount of benefits to be paid within the scope of the workers' compensation statutes, and type of addition or excess insurance coverage that may be required. The department is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the workers' compensation trust fund provided for in Code Section 50-5-14. (Ga. L. 1969, p. 234, § 1; Ga. L. 1972, p. 1015, § 406; Ga. L. 1982, p. 3, § 50; Ga. L. 2008, p. 245, § 6/SB 425.)

The 2008 amendment, effective July 1, 2008, in the first sentence, inserted “the deductibles to be paid by agencies and authorities,”; and added the last two sentences. premiums to be charged and any

50-5-14. Authorization for Workers’ Compensation Trust Fund to retain moneys as reserve; procedures for use of investment moneys.

In order to finance the continuing liability established with other agencies of state government, the Workers’ Compensation Trust Fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance and all moneys received as interest and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the Workers’ Compensation Trust Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the Workers’ Compensation Trust Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the Workers’ Compensation Trust Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services. (Ga. L. 1972, p. 350, § 1; Ga. L. 2000, p. 1474, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 82 Am. Jur. 2d, Workers’ Compensation, §§ 1 et seq., 47.

C.J.S. — 99 C.J.S., Workmen’s Compensation, § 1 et seq. 100 C.J.S., Workmen’s Compensation, § 646 et seq.

ALR. — Constitutionality of retroactive statute providing compensation for death in service of state, 28 ALR 1100.

50-5-15. Provision of administrative services to local political subdivisions.

Any other provision of this chapter notwithstanding, the Department of Administrative Services is authorized to provide any administrative service which it normally provides to the various departments, agencies, and institutions of the state under the authority of this chapter to any local political subdivision within the state. The provision of one or more such administrative services to any or all political subdivisions shall be at the sole discretion of the commissioner of administrative services and such services shall only be rendered after a request for such services from the governing

body of the local political subdivision. (Code 1981, § 50-5-15, enacted by Ga. L. 1983, p. 673, § 1; Ga. L. 1988, p. 1944, § 1.)

50-5-16. Liability insurance and self-insurance for state authorities; how program funded; incentive programs; incentive programs authorized; deduction of unpaid amounts; reserves.

(a) The commissioner of administrative services may establish a program of liability insurance and self-insurance for state authorities.

(b) State funds may be appropriated for the program, but the commissioner shall charge such premiums, deductibles, and other payments as the commissioner determines necessary or useful. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. From the funds available to the commissioner, the commissioner shall establish such reserves as the commissioner determines necessary, purchase commercial policies, employ consultants, and otherwise administer the program. Any amounts held by the liability insurance or self-insurance funds which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in trust accounts for credit only to the liability insurance and self-insurance funds. The director of the Office of Treasury and Fiscal Services shall invest the liability insurance and self-insurance funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the liability insurance and self-insurance funds. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services.

(c) The commissioner may generally provide for insurance or self-insurance under such terms and conditions as he determines, and he may provide for particular coverages and other terms and conditions of the unique exposures particular to one or more authorities. The commissioner may provide for endorsements for contract liability and, where necessary or convenient to the public functions of an authority, he may also provide for additional insureds.

(d) Where existing programs of insurance and self-insurance have been established among state authorities by contract, the commissioner may arrange with such authorities to replace the existing programs with such programs as he may establish. In doing so he may assume existing and potential liabilities of the established programs. To the extent that funds of the existing programs are not necessary for such purposes, the commissioner may agree to the refund of such funds.

(e) Nothing in this Code section or in any related act of the commissioner or the participating authorities shall be construed as waiving any immunity or privilege of any kind now or hereafter enjoyed by the state or the state authorities, including without limitation defenses under the Eleventh Amendment of the Constitution of the United States, sovereign immunity, or any other legal or factual defense, privilege, or immunity which the state or a participating authority may enjoy or assert. The intent of this authorization is to provide for protection only in the absence of such defenses.

(f) Similarly, nothing in this Code section or in any related act of the commissioner or participating authorities shall pledge or be deemed to pledge the credit of the state. No obligation shall arise beyond the limits of liability established by the commissioner or beyond such other terms and conditions as he may establish, and no obligation shall be imposed or created upon other funds of the state or upon other funds of the participating authorities.

(g) Nothing in the program of insurance or self-insurance shall cause one authority to be liable for claims of another or otherwise expose the assets of one authority to claims of liability respecting another authority. (Code 1981, § 50-5-16, enacted by Ga. L. 1987, p. 176, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1474, § 9; Ga. L. 2008, p. 245, § 7/SB 425.)

The 2008 amendment, effective July 1, 2008, in subsection (b), inserted “, deductibles,” in the first sentence, and added the second and third sentences.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, “the Office” was substituted for “its Office” in the last sentence in subsection (b).

50-5-17. Revenue from sale of surplus state equipment.

The Department of Administrative Services is authorized to retain in a reserve fund moneys generated from the sale of any surplus personal property pursuant to Article 4 of this chapter. Such funds may be used to cover any cost associated with disposing of the state’s surplus personal property or such funds may, subject to the approval of the Office of Planning and Budget, be used to purchase personal property for the Department of Administrative Services or for any offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other

entities of the state government. (Code 1981, § 50-5-17, enacted by Ga. L. 1988, p. 1944, § 2; Ga. L. 2005, p. 117, § 25/HB 312.)

ARTICLE 2

ADMINISTRATIVE SPACE MANAGEMENT

50-5-30 through 50-5-39.

Reserved. Repealed by Ga. L. 2005, p. 100, § 1/SB 158, effective April 12, 2005.

Editor's notes. — This article was based on Ga. L. 1976, p. 252, §§ 2-10; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 283, § 1; Ga. L. 1985, p. 949, § 1; Ga. L. 1988, p. 426, § 1; Ga. L. 1989, p. 1641, § 13; Ga. L. 1994, p. 1865, §§ 8-12; Ga. L. 1995, p. 1302, § 15; Ga. L. 1998, p. 128, § 50; Ga. L. 2004, p. 690, § 28.

ARTICLE 3

STATE PURCHASING

Cross references. — Criminal penalty for sale by state officer or employee of personal property to state, § 16-10-6. Criminal penalty for conspiracy in restraint of free and open competition in transactions with state, § 16-10-22. Guidelines for purchase of textbooks or contracts to purchase textbooks, § 20-2-1014. Purchase and issuance of military property generally, §§ 38-2-31, 38-2-32. Contracts by state or subdivision thereof for purchase, lease, or other acquisition of

equipment and supplies from United States, and as to contracts between state and any political subdivision or municipality thereof for acquisition of property, § 50-16-81.

Editor's notes. — By resolution (Ga. L. 1983, p. 598), the General Assembly adopted the temporary plan of operation developed by the Department of Administrative Services to serve as a permanent plan for the operation of the Federal Surplus Property Program in Georgia. (See 40 U.S.C. § 484.)

JUDICIAL DECISIONS

Unilateral modification of existing contracts unlawful. — Contracting procedures for the State of Georgia are controlled by statute. There is no provision in the statute for any state employee to have the power to unilaterally modify existing contracts. Persons dealing with a public officer must take notice of the extent of the officer's powers. *State v. U.S. Oil Co.*, 194 Ga. App. 1, 389 S.E.2d 498 (1989), cert. denied, 194 Ga. App. 912, 389 S.E.2d 498 (1990).

Competitive bidding. — Where there is no impediment to competitive bidding, the State Purchasing Act, O.C.G.A. Art. 3, Ch. 5, T. 50, and relevant rules mandate competitive bidding. The statutes and rules clearly mandate that procurers award contracts to

the lowest responsible bidder whenever possible. *Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238 (11th Cir.), cert. denied, 506 U.S. 907, 113 S. Ct. 302, 121 L. Ed. 2d 225 (1992).

Low bidder's constitutionally protected property interest. — Any discretion to choose the lowest responsible bidder for a contract to provide electric service to a new prison did not preclude the lowest responsible bidder's claim to a constitutionally protected property interest in the award of the contract. *Pataula Elec. Membership Corp. v. Whitworth*, 951 F.2d 1238 (11th Cir.), cert. denied, 506 U.S. 907, 113 S. Ct. 302, 121 L. Ed. 2d 225 (1992).

PART 1

GENERAL AUTHORITY, DUTIES, AND PROCEDURE

50-5-50. Purposes and policies of part.

The underlying purposes and policies of this part are:

(1) To permit the continued development of centralized procurement policies and practices;

(2) To control and reduce the cost of purchasing, leasing, renting, or otherwise procuring supplies, materials, services, and equipment through the use of centralized purchasing;

(3) To ensure openness and accessibility by all qualified vendors to the state's purchasing processes so as to achieve the lowest possible costs to the state through effective competition among such vendors;

(4) To provide for timely, effective, and efficient service to using agencies and to vendors doing business with the state;

(5) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the state;

(6) To provide for increased public confidence in the procedures followed in public procurement; and

(7) To provide safeguards for the maintenance of a procurement system of quality and integrity. (Ga. L. 1931, p. 7, § 2; Code 1933, § 40-1901; Ga. L. 1937, p. 503, § 1; Ga. L. 1939, p. 160, § 1; Ga. L. 1950, p. 280, § 1; Ga. L. 1955, p. 643, § 1; Ga. L. 1979, p. 659, § 1.)

Editor's notes. — Ga. L. 1937, p. 503, § 3, not codified by the General Assembly, provided that nothing contained in the Act would be construed to interfere with or change the law with regard to the printing of the reports of the Supreme Court and the Court of Appeals of Georgia as is set forth in Art. 2 of Ch. 18 of this title.

Ga. L. 1979, p. 659, § 7, not codified by the General Assembly, provided that nothing in Code Sections 50-5-51, 50-5-57, 50-5-58, 50-5-67, and this Code section would be construed to affect, repeal, or limit the

operation of either an Act known as the "Unemployment Compensation Law," approved March 29, 1937 (Code Section 34-8-1 et seq.), as amended, particularly by an Act approved March 31, 1976 (Code Section 34-8-153 et seq.), or an Act known as the "Executive Reorganization Act of 1972," approved April 6, 1972 (Ga. L. 1972, p. 1015).

Law reviews. — For article advocating the inclusion of state purchasing regulations under the Georgia Administrative Procedure Act (Ch. 13, T. 50), see 1 Ga. St. B.J. 269 (1965).

JUDICIAL DECISIONS

Applicability to county. — Long County is not subject to the competitive bidding provisions in O.C.G.A. § 50-5-50 et seq., setting forth the procurement policies and practices

for the Department of Administrative Services. *Stryker v. Long County Bd. of Comm'rs*, 277 Ga. 624, 593 S.E.2d 348 (2004).

Rights of rejected bidder. — Even in

competitive sealed proposals under O.C.G.A. § 50-5-67(a), a rejected bidder who alleges the proposal was conducted in an arbitrary and unfair manner falls within the zone of interest to be protected by the

procurement laws. *Amdahl Corp. v. Georgia Dep't of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

Cited in *Harrison Co. v. Code Revision Comm'n*, 244 Ga. 325, 260 S.E.2d 30 (1979).

50-5-51. Power, authority, and duty of department.

The Department of Administrative Services shall have the power and authority and it shall be the department's duty, subject to this part:

(1) To canvass all sources of supply and to contract for the lease, rental, purchase, or other acquisition of all supplies, materials, equipment, and services other than professional and personal employment services required by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of this state under competitive bidding in the manner and subject to the conditions provided for in this article;

(2) To establish and enforce standard specifications which shall apply to all supplies, materials, equipment, and services other than professional and personal employment services purchased or to be purchased for the use of the state government for any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(3) To contract for all electric light power, postal, and any and all other contractual purchases and needs of the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state or in lieu of such contract to authorize any offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state to purchase or contract for any or all such services;

(4) To have general supervision of all storerooms and stores operated by the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state; to provide for transfer or exchange to or between all state offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state or to sell all supplies, materials, and equipment which are surplus, obsolete, or unused; and to maintain inventories of all fixed property and of all movable equipment, supplies, and materials belonging to the state government or any of its offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state;

(5) To make provision for and to contract for all state printing, including all printing, binding, paper stock, and supplies or materials in connection with the same, except as provided in this part. For the purpose of obtaining bids on printing, it shall have the power to divide

the printing into various classes and to provide stipulations and specifications therefor and advertise, receive bids, and contract separately for the various classes;

(6) To procure all fidelity bonds covering state officials and employees required by law or administrative directive to give such bonds; and, in order to provide the bonds at a minimum expense to the state, the bonds may be procured under a master policy or policies providing insurance agreements on a group or blanket coverage basis with or without deductibles or excess coverage over the state's retention as determined by the commissioner. Fidelity bonds covering state officials and employees which are procured pursuant to this paragraph shall expressly provide that all state officials and employees who are required by law to be bonded be named in the fidelity bond as insureds or beneficiaries under the terms of the fidelity bond. Inclusion of any state official, officer, or employee required by law or administrative directive to be specifically bonded in a master fidelity bond under the terms of this part shall satisfy any statutory requirement that the official, officer, or employee be bonded. Fidelity bonds procured pursuant to this paragraph shall also expressly provide for indemnification, out of the proceeds of the fidelity bonds, of all state officials and employees for any liability or expense of any nature resulting from a claim on the state official's or employee's bonds which is due to or as a result of an act of a subordinate of the state official or employee. In order to finance the continuing liability established with other agencies of state government, the commissioner is authorized to retain all moneys paid to the department as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources to set up and maintain a reserve for the payment of such liability and the expenses necessary to administer properly the insurance program. The commissioner is further authorized to establish incentive programs including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the reserve fund provided for in this Code section. The commissioner shall invest the moneys in the same manner as other such moneys in his or her possession;

(7) To establish and operate the state agency for surplus property for the purpose of distributing surplus properties made available by the federal government under Pub. L. 152, 81st Congress, as amended, to institutions, organizations, agencies, and others as may be eligible to receive such surplus properties pursuant to applicable provisions of

federal law. The commissioner may enter into or authorize the aforesaid state agency for surplus property to enter into cooperative agreements with the federal government for the use of surplus properties by the state agency. The commissioner is authorized to enter into contracts with other state, local, or federal agencies, or with other persons with respect to the construction, operation, maintenance, leasing, or rental of a facility for use by the state agency. Further, the commissioner may acquire real or personal property for such purposes;

(8) To delegate, in the department's discretion, to medical facilities under the jurisdiction of the Board of Regents for the University System of Georgia the ability to purchase medical equipment and medical supplies necessary for medical teaching purposes;

(9) To enter into or authorize agreements with private nonprofit organizations or other states and their political subdivisions to effectuate the purposes and policies of this chapter;

(10) To collect, retain, and carry over from year to year in a reserve fund any moneys, rebates, or commissions payable to the state that are generated by supply contracts established pursuant to Code Section 50-5-57; and

(11) To conduct the procurement of all technology resource purchases not exempted from competitive bidding requirements in accordance with the technology standards and specifications established by the Georgia Technology Authority. (Ga. L. 1931, p. 7, § 3; Code 1933, § 40-1902; Ga. L. 1937, p. 503, § 2; Ga. L. 1943, p. 406, § 1; Ga. L. 1960, p. 78, § 1; Ga. L. 1960, p. 1098, § 1; Ga. L. 1962, p. 644, § 1; Ga. L. 1974, p. 504, § 1; Ga. L. 1975, p. 672, § 1; Ga. L. 1976, p. 252, § 12; Ga. L. 1978, p. 1144, § 1; Ga. L. 1978, p. 1701, § 1; Ga. L. 1979, p. 659, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 1996, p. 885, § 3; Ga. L. 2005, p. 117, § 10/HB 312; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2008, p. 245, § 8/SB 425.)

The 2008 amendment, effective July 1, 2008, added the fifth and sixth sentences in paragraph (6).

Cross references. — Authority of State Board of Education regarding purchase of supplies and services by public elementary and secondary schools, § 20-2-500 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "therefor" was substituted for "therefore" in the second sentence of paragraph (5).

Pursuant to Code Section 28-9-5, in 2005, a comma was inserted following "agencies" two times in paragraphs (3) and (4).

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be

cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in

purchase delays and increased administrative costs.”

U.S. Code. — Public Law 152, 81st Congress, referred to in paragraph (7) of this

Code section, is codified as 40 U.S.C. § 471 et seq., 40 U.S.C. § 751 et seq., and 41 U.S.C. § 252 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Authority to establish purchase specifications. — It was evident from former Code 1933, § 40-1902 and Ga. L. 1939, p. 160, § 7 (see O.C.G.A. §§ 50-5-51 and 50-5-56) that the department was authorized to establish certain specifications which should apply to purchases which were to be used by the various state departments; however, it was a practical and physical impossibility to set up specifications for every one of the thousands of different articles which were used by the state departments. 1948-49 Op. Att’y Gen. p. 570.

Authority to enforce specifications. — The supervisor of purchases (now commissioner of administrative services) may cancel purchase orders where the material fails to meet specifications. 1945-47 Op. Att’y Gen. p. 318.

Department has the authority to enforce specifications, and this would include the authority to cancel orders when items do not meet specifications. 1948-49 Op. Att’y Gen. p. 570.

Solicitation of bids for certain purchases. — With respect to purchases in excess of \$1,000.00, bids must be solicited or advertised for in some manner reasonably calculated to reach all reasonably available sources of supply. 1974 Op. Att’y Gen. No. 74-16.

Competent vendors. — Department is under duty to exclude no competent vendor from department’s list, and also to seek out and discover, to the best of the department’s ability, all sources of supply, giving all such vendors access to the established list. 1974 Op. Att’y Gen. No. 74-16.

Purchase of antique items. — If the supervisor of purchases (now commissioner) receives a requisition for a particular antique item and, after canvassing all available sources of supply can find only one dealer who can supply the requisitioned antique item, and is convinced that no other suitable substitute item can be used, the supervisor can receive the bid from the single dealer who can supply the antique item in question. 1968 Op. Att’y Gen. No. 68-143.

Georgia Residential Finance Authority may seek, but is not required to seek, assistance and approval of Department of Administrative Services, Division of Property and Space Management, regarding rental agreements for its office space. 1982 Op. Att’y Gen. No. 82-24.

Absent clear authorization the Department of Administrative Services to deal with the Georgia Residential Finance Authority as a “state agency” the latter does not come within that definition. 1982 Op. Att’y Gen. No. 82-24.

Georgia Correctional Industries Administration. — Georgia Correctional Industries Administration must utilize department in buying raw materials which will be used in the manufacture and production of products for resale. 1967 Op. Att’y Gen. No. 67-316.

Area planning and development commissions. — Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commission in their area. 1970 Op. Att’y Gen. No. 70-202.

Commissioner vested with broad discretion. — O.C.G.A. § 50-5-51 establishes no guideposts or requirements governing the manner of consummating the sales authorized and, consequently, the supervisor of purchases (now commissioner) is vested with broad discretion in this matter. 1960-61 Op. Att’y Gen. p. 380.

Correction of clerical pricing error. — Commissioner may alter purchase order to correct clerical error regarding price. 1962 Op. Att’y Gen. p. 446.

Authority to operate self-service store. — Under the general powers and authority granted to the department, the commis-

sioner may enter into an agreement with the General Services Administration to operate a self-service store which is located conveniently for state agencies and whose expenses are jointly shared. 1971 Op. Att'y Gen. No. 71-181.

Commissioner disposes of property. — Any forest commission property in the nature of supplies, materials, and equipment, in other words, those things that would not be fixtures and thereby part of the realty, is to be disposed of by the supervisor of purchasing (now commissioner). 1960-61 Op. Att'y Gen. p. 381.

Excess capacity or idle computer time. — Excess capacity or idle computer time available on a second-shift basis was not "unserviceable property" within the contemplation of former Code 1933, § 91-804, nor was it "surplus, obsolete or unused" equipment which may be disposed of under former Code 1933, § 40-1902. 1963-65 Op. Att'y Gen. p. 419.

Transfer of equipment to county as gift under this section is not permitted. 1967 Op. Att'y Gen. No. 67-57.

State unobligated to pay franchise fee or tax. — While the state might not be required to pay a franchise fee or other tax directly to a city, in those situations where the state is paying money to a company, and that company is in turn remitting the money to the city as a franchise fee, it cannot be said that the state is the entity which is subject to the legal incidence of the tax so that it could successfully assert an exemption from such fees. 1976 Op. Att'y Gen. No. 76-42.

Payment for utilities at established rate. — Obligation of department to pay for utilities at established rate is not affected by the fact that the sums paid may include or reflect taxes paid by the provider of the services to a municipality. 1976 Op. Att'y Gen. No. 76-42.

Relocation of power lines is not contractual service as contemplated by paragraph (3) of this section; this would be a contract for service or construction which should properly be handled by the interested department. 1962 Op. Att'y Gen. p. 469.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 62 et seq., 249, 252, 273. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 16. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 69, 70, 74.

C.J.S. — 81A C.J.S., States, § 268 et seq.

ALR. — Act or default of employee cov-

ered by fidelity bond or insurance, 43 ALR 977; 46 ALR 976; 62 ALR 412; 77 ALR 861; 98 ALR 1264.

Who is an employee within fidelity bond or insurance, 140 ALR 699.

Right of one covered by a fidelity bond to intervene in action by obligee against obligor, 157 ALR 159.

50-5-51.1. Purchase of commercial fidelity bonds for officials, officers, and employees of certain county boards and departments.

The commissioner of administrative services may, upon request, assist and coordinate with county departments of health, county departments of family and children services, and community service boards the purchase of commercial fidelity bonds for officials, officers, and employees of such boards and departments. The payment of the premium to the commercial fidelity carrier will be the responsibility of such county departments of health, county departments of family and children services, and community service boards. (Code 1981, § 50-5-51.1, enacted by Ga. L. 1994, p. 1717, § 7.)

50-5-52. Power to examine books, records, and papers; report of purchases.

The Department of Administrative Services or the state accounting officer shall have power to examine books, records, and papers of any office, agency, department, board, bureau, commission, institution, or other entity of the state government relative to purchases and to require those in control thereof to furnish the department with copies of any and all records pertaining thereto. (Ga. L. 1931, p. 7, § 4; Code 1933, § 40-1905; Ga. L. 2005, p. 117, § 11/HB 312.)

50-5-53. Authorization to employ assistants, fix salaries, and make assignments.

Subject to applicable rules of the State Personnel Administration, the Department of Administrative Services may appoint as many assistants and employees, and fix their salaries, as are essential to the state's interest in the execution of the terms and provisions of this part. Assignment of an assistant or assistants to any of the departments, institutions, or agencies of the state may be made by the Department of Administrative Services. It shall be unlawful for any other agency of the state to employ any person for the purposes set out in this part unless that person complies with the minimum requirements for purchasing personnel established by the State Personnel Administration in conjunction with the Department of Administrative Services. (Ga. L. 1937, p. 503, § 17; Ga. L. 1939, p. 160, § 8; Ga. L. 2005, p. 117, § 12/HB 312; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Person-

nel Administration" twice in this Code section.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 10 et seq., 26 et seq., 61 et seq. 81A C.J.S., States, § 166 et seq.

50-5-54. Rules and regulations to be made and published.

The commissioner of administrative services is authorized and empowered by this part to make all rules, regulations, and stipulations and to provide specifications to carry out the terms and provisions of this part as may be necessary for the purposes of this part. The rules and regulations as prescribed by the commissioner shall be published in pamphlet form and all the departments of the state government shall be furnished with copies of the same. (Ga. L. 1939, p. 160, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive vehicles and pro-

mulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att'y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 16.

C.J.S. — 81A C.J.S., States, § 268 et seq.

50-5-55. Specified purposes for rules and regulations.

The commissioner of administrative services may adopt, modify, or abrogate rules and regulations covering the following purposes, in addition to those authorized elsewhere in this part:

(1) Requiring monthly reports by state departments, institutions, or agencies of stocks, supplies, materials, and equipment on hand and prescribing the form of such reports;

(2) Prescribing the manner in which supplies, materials, and equipment shall be delivered, stored, and distributed;

(3) Prescribing the manner of inspecting deliveries of supplies, material, and equipment and making chemical or physical tests of samples submitted with bids and samples of deliveries to determine whether deliveries have been made to the departments, institutions, or agencies in compliance with specifications;

(4) Prescribing the manner in which purchases shall be made by the Department of Administrative Services in all emergencies as defined in Code Section 50-5-71; and

(5) Providing for such other matters as may be necessary to give effect to the foregoing rules and the provisions of this part. (Ga. L. 1937, p. 503, § 13; Ga. L. 1939, p. 160, § 6.)

OPINIONS OF THE ATTORNEY GENERAL

Purchases of drugs covered by federal patents. — The department has no authority under Ga. L. 1939, p. 160, § 6 (see O.C.G.A. § 50-5-55) either to authorize or prohibit purchases of foreign made drugs that, if made in this country, would be covered by United States patents; insofar as a rule sought to carry forth the intent of former Code 1933, § 40-1903 (see O.C.G.A.

§ 50-5-60), favoring of Georgia products, it would be perfectly within its power and authority. 1963-65 Op. Att'y Gen. p. 55.

Petroleum credit card purchases authorized. — The commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive vehicles and promulgate reasonable rules and regulations for

administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att'y Gen. No. 67-219.

50-5-56. Department to establish standard contract specifications.

It shall be the duty of the Department of Administrative Services to formulate, adopt, establish, and modify standard specifications applying to state contracts. In the formulation, adoption, and modification of any standard specifications, the Department of Administrative Services shall seek the advice, assistance, and cooperation of any state department, institution, or agency to ascertain its precise requirements in any given commodity. Each specification adopted for any commodity shall insofar as possible satisfy the requirements of a majority of the state departments, institutions, or agencies which use the same in common. After its adoption each standard specification shall until revised or rescinded apply alike in terms and effect to every state purchase of the commodity described in such specifications. In the preparation of any standard specifications, the Department of Administrative Services shall have power to make use of any state laboratory for chemical and physical tests in the determination of quality. (Ga. L. 1937, p. 503, § 14; Ga. L. 1939, p. 160, § 7.)

OPINIONS OF THE ATTORNEY GENERAL

Establishment of specifications applicable to purchases. — It is evident from Ga. L. 1937, §§ 2 and 14 (see O.C.G.A. §§ 50-5-51 and 50-5-56) that the department is authorized to establish certain specifications which shall apply to purchases which are to be used by the various state departments; however, it is a practical and physical impossibility to set up specifications for every one of the thousands of different articles which

are used by the state departments. 1948-49 Op. Att'y Gen. p. 570.

Responsibilities of department. — Ultimate responsibility for determining whether a product complies with a standard specification lies with department as does the responsibility for making all ultimate determinations as to acceptability insofar as necessary to award a contract. 1974 Op. Att'y Gen. No. 74-16.

50-5-57. Duty of department to purchase all supplies, services, materials, and equipment; requisition by state agencies; unlawful purchases.

The Department of Administrative Services shall have the power and authority and it shall be the department's duty, subject to this part, to contract for the purchase, lease, or other mode of acquisition of all supplies, materials, services other than professional and personal employment services, and equipment required by the state. After sources of supply have been established by contract under competitive bidding and certified by the Department of Administrative Services to the different departments, institutions, and agencies of the state as provided for in this part, the institutions, agencies, or departments of the state shall make requisition on blanks to be approved by the Department of Administrative Services for such supplies, materials, and equipment required by them from the supply

so certified and, except as otherwise provided for or unless the departments, institutions, and agencies of the state obtain written authority from the Department of Administrative Services to do so, it shall be unlawful for any of them to purchase any supplies, materials, or equipment from sources other than as certified to them by the Department of Administrative Services. One copy of the requisition shall be sent to the Department of Administrative Services when the same is issued. (Ga. L. 1950, p. 181, § 1; Ga. L. 1979, p. 659, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

General Services Administration as certified supply source. — Department has the authority to establish the General Services Administration as a certified source of supply for the state agencies. 1971 Op. Att'y Gen. No. 71-114.

Liquified petroleum gas. — Liquified petroleum gas is a usable commodity within the term "supplies" as used in this section; it is the duty of the department to obtain competitive bids for the purchase of liquified petroleum gas for use and consumption by the state government. 1958-59 Op. Att'y Gen. p. 313.

Department not required to purchase certain signs. — Signs which are the result of

creative commercial art as practiced by a professional advertising firm are neither supplies, material, nor equipment, the purchase of which would be required of the department in accordance with this section. 1963-65 Op. Att'y Gen. p. 280.

Procurement of health insurance contracts. — The State Personnel Board, and not the Department of Administrative Services has the exclusive authority to contract with health maintenance organizations for health insurance benefits for state employees and public school teachers under the State Health Benefit Plan. 1987 Op. Att'y Gen. No. 87-32.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 16. 72

Am. Jur. 2d, States, Territories, and Dependencies, §§ 69, 70, 74.

C.J.S. — 81A C.J.S., States, § 274 et seq.

50-5-58. Cases where purchases through department not mandatory.

(a) Unless otherwise ordered by the Department of Administrative Services, the purchase of supplies, materials, equipment, and services, other than professional and personal employment services, through the Department of Administrative Services shall not be mandatory in the following cases:

(1) Technical instruments and supplies and technical books and other printed matter on technical subjects; also manuscripts, maps, books, pamphlets, and periodicals for the use of any library in the state supported by state funds; also services;

(2) Livestock for slaughter and perishable articles such as fresh vegetables, fresh meat, fish and oysters, butter, eggs, poultry, and milk. No other article shall be considered perishable within the meaning of this clause unless so classified by the Department of Administrative Services; and

(3) Emergency supplies of drugs, chemicals and sundries, dental supplies, and equipment.

(b) In the purchasing of emergency supplies under paragraph (3) of subsection (a) of this Code section, it shall be the duty of the department making such purchases to report same to the Department of Administrative Services, giving the circumstances necessitating the purchases.

(c) Nothing in this part shall be construed to give the Department of Administrative Services any supervision over the selection or purchase of school textbooks, which is vested by law in the Department of Education. (Ga. L. 1937, p. 503, § 8; Ga. L. 1939, p. 160, § 4; Ga. L. 1970, p. 287, § 1; Ga. L. 1979, p. 659, § 6; Ga. L. 1996, p. 885, § 4; Ga. L. 2008, p. 267, § 7/SB 482.)

The 2008 amendment, effective May 6, 2008, in paragraph (a)(1), substituted “for the use of any library in the state” for “for the use of the State Library or any other library in the state”.

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that many of the laws establishing guidelines and re-

quirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

OPINIONS OF THE ATTORNEY GENERAL

Skilled services contracts. — A contract for necessary skilled services in repairing and maintaining school equipment and installations does not come under Ga. L. 1931, p. 7 (see O.C.G.A. Art. 3, Ch. 5, T. 50) requiring a competitive bid through the office of the supervisor of purchases (now commissioner), but may be negotiated or let by competitive bid by the State Board of Education as may be deemed necessary and advisable under the particular circumstances. 1960-61 Op. Att’y Gen. p. 179.

Educational sound film as “technical supply.” — Inasmuch as educational sound film is “one of a kind” and available from only one source, it could legally be treated as a “technical supply,” especially in view of a rather strong indication in this section of a

legislative intent that library materials of the same general nature not be included among those items which must be purchased through the department. 1963-65 Op. Att’y Gen. p. 612.

Term “textbook” does not have such broad definition as would include “sound film.” 1963-65 Op. Att’y Gen. p. 612.

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate program of petroleum credit card purchases by state employees for state-owned automotive vehicles and promulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att’y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258. 64 Am. Jur. 2d, Public Works and Contracts, §§ 8, 16. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 69, 70, 74.

C.J.S. — 81A C.J.S., States, § 274 et seq.

ALR. — What is an “emergency” within charter or statutory provision excepting

emergency contract or work from requirement of bidding on public contracts, 71 ALR 173.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

50-5-59. State agencies to furnish department estimates and inventories.

It shall be the duty of all departments, institutions, or agencies of the state government to furnish to the Department of Administrative Services when requested and on blanks to be approved by it tabulated estimates of all supplies, materials, and equipment needed and required by the department, institution, or agency for such periods in advance as may be directed by the Department of Administrative Services; and it shall further be the duty of all departments, institutions, or agencies to furnish the Department of Administrative Services inventories from time to time of supplies, materials, or equipment on hand when requested by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 5.)

50-5-60. Preference to supplies, equipment, materials, and agricultural products produced in Georgia generally; determination as to reasonableness of preference.

(a) The state and any department, agency, or commission thereof, when contracting for or purchasing supplies, materials, equipment, or agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) Vendors resident in the State of Georgia are to be granted the same preference over vendors resident in another state in the same manner, on the same basis, and to the same extent that preference is granted in awarding bids for the same goods or services by such other state to vendors resident therein over vendors resident in the State of Georgia.

(c) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the state or its department, agency, or commission shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of

political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. The state or its department, agency, or commission shall not divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this subsection.

(d) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1933, p. 1178; Code 1933, § 40-1903; Ga. L. 1937, p. 503, § 11; Ga. L. 1990, p. 1466, § 1; Ga. L. 2009, p. 204, § 3/SB 44.)

The 2009 amendment, effective July 1, 2009, rewrote subsection (a) and added subsections (c) and (d).

Cross references. — Conspiracy in restraint of free and open competition in transactions with state or political subdivisions, § 16-10-22. Preferences for products manufactured in Georgia, § 36-84-1.

Editor's notes. — Ga. L. 2009, p. 204, § 6, not codified by the General Assembly, provides that: "This Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective." This Act became effective July 1, 2009.

JUDICIAL DECISIONS

Applicability of laws. — Laws applicable to the department are not applicable to the General Assembly. *Harrison Co. v. Code*

Revision Comm'n, 244 Ga. 325, 260 S.E.2d 30 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Contracting with foreign corporations. — This section does not prohibit the department from contracting with foreign corporations where the state will benefit as a result of such arrangement. 1948-49 Op. Att'y Gen. p. 568.

Purchases of drugs covered by federal patents. — The department has no authority under Ga. L. 1939, p. 160, § 6 (see O.C.G.A.

§ 50-5-55) either to authorize or prohibit purchases of foreign made drugs that, if made in this country, would be covered by United States patents; insofar as a rule sought to carry forth the intent of that section, favoring of Georgia products, it would be perfectly within its power and authority. 1963-65 Op. Att'y Gen. p. 55.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 27.

ALR. — Validity, construction, and effect of state and local laws requiring government-

tal units to give "purchase preference" to goods manufactured or services performed in state, 84 ALR4th 419.

50-5-60.1. Use of recycled paper products.

Reserved. Repealed by Ga. L. 1991, p. 606, § 2, effective July 1, 1996.

The 2009 amendment, by Ga. L. 2009, p. 8, § 50, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, designated this Code section as reserved.

Editor's notes. — This Code section was based on Code 1981, § 50-5-60.1, enacted by Ga. L. 1991, p. 606, § 1.

50-5-60.2. Use of recycled content paper products.

(a) As used in this Code section, the term:

(1) “Mill broke” means any paper waste generated in a paper mill prior to the completion of the paper-making process up to and including the cutting and trimming of the paper machine reel into small rolls or rough sheets.

(2) “Printing and writing paper” means high-grade office paper including but not limited to copier paper, bond paper, forms, stationery, envelopes, text and cover stock, as well as offset printing paper.

(3) “Recycled content paper” means any paper having recycled fiber content.

(4) “Recycled fiber content” means those materials and by-products that have been recovered or diverted from the solid waste stream. Such term does not include sawdust, wood chips, wood slabs, or the virgin content of mill broke.

(b) At least 95 percent of moneys spent on printing and writing paper purchased by state agencies, commissions, and authorities shall be spent upon recycled content paper which meets or exceeds Environmental Protection Agency guidelines for minimum recycled content; provided, however, the provisions of this subsection shall not apply if the price of recycled content paper required by this Code section exceeds 8 percent of the price paid by the Department of Administrative Services for 100 percent virgin paper products or if the recycled content paper required by this Code section does not meet the standards, quality level, and specifications established by the Department of Administrative Services.

(c) It shall be the responsibility of each agency, commission, and authority to monitor, document, and report its use of recycled content paper. Any state agency, institution, commission, and authority that documents and reports attainment of the 95 percent requirement set forth in subsection (b) of this Code section for two consecutive fiscal years shall still be required to monitor and document its use of recycled content paper but shall no longer be required to submit a report upon written confirmation from the Department of Administrative Services that the 95 percent requirement set forth in subsection (b) of this Code section has been satisfied for two consecutive fiscal years by that particular agency, commission, institution, or authority; provided, however, that the Department of Administrative Services shall conduct periodic audits, and any state agency, institution, commission, and authority exempted from the reporting requirement pursuant to this subsection that is not satisfying the 95 percent requirement set forth in subsection (b) of this Code section may be directed

by the Department of Administrative Services to resume reporting until reattainment of the 95 percent requirement set forth in subsection (b) of this Code section is confirmed for two additional consecutive fiscal years.

(d) The Department of Administrative Services shall maintain and continue to develop and implement reporting procedures and educational programs to assist agencies, commissions, institutions, and authorities in meeting the requirements of this Code section to maximize both purchasing power and the use of recycled products by each such agency, commission, institution, and authority. (Code 1981, § 50-5-60.2, enacted by Ga. L. 1991, p. 606, § 1; Ga. L. 1993, p. 531, § 2; Ga. L. 1998, p. 261, § 1; Ga. L. 2006, p. 72, § 50/SB 465.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “confirmation” was substituted for “conformation” in the second sentence of subsection (c).

Editor’s notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the

procurement of products that contain recovered materials. The General Assembly finds that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of the state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-60.3. Use of retreaded tires.

All state agencies, departments, and authorities shall replace original truck tires of over 16 inch rim size used on nonsteering axles with retreaded tires or subscribe to a retread service as replacement is necessary and as stockpiled tires are depleted; provided, however, that nothing in this Code section shall be construed so as to discourage the use of retreaded tires on other size rims or other types of vehicles if an agency, department, or authority deems such use to be economical, feasible, and desirable. (Code 1981, § 50-5-60.3, enacted by Ga. L. 1993, p. 531, § 3.)

Editor’s notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: “It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procurement of products that contain recovered materials. The General Assembly finds

that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced.”

50-5-60.4. Use of compost and mulch in road building, land maintenance, and land development activities; preference to be given Georgia compost and mulch.

(a) All state agencies, departments, and authorities responsible for the maintenance of public lands shall give preference to the use of compost and mulch in all road building, land maintenance, and land development activities. Preference shall be given to compost and mulch made in the State of Georgia from organics which are source separated from the state's nonhazardous solid waste stream.

(b) The Department of Agriculture shall develop and publish standards for the compost and mulch required by subsection (a) of this Code section by January 1, 1994. (Code 1981, § 50-5-60.4, enacted by Ga. L. 1993, p. 531, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "State of Georgia" was substituted for "state of Georgia" in subsection (a).

Editor's notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: "It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the

procurement of products that contain recovered materials. The General Assembly finds that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced."

50-5-60.5. Implementation of policies requiring reduction and reuse of materials generated by state agencies.

In addition to recycling, each state agency, department, and authority shall take action to implement policies which require reduction and reuse of materials generated by state agencies. These policies shall include, but not be limited to, double-sided printing and copying, refilling and reusing laser printer cartridges, the purchase of source reduced products, and where feasible discontinuing the use of 8 1/2" x 14" paper. Replacement copier machines should include double-sided copying capability and shall be compatible with the use of paper containing recycled content. (Code 1981, § 50-5-60.5, enacted by Ga. L. 1993, p. 531, § 3.)

Editor's notes. — Ga. L. 1993, p. 531, § 1, not codified by the General Assembly, provides: "It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect and enhance the quality of its environment, to institute and maintain a comprehensive program for the procurement of products that contain recovered materials. The General Assembly finds

that it is in the public interest for the state to create incentives that increase the demand for products manufactured with recovered materials. The purchasing power of state government can be used to stimulate demand for products manufactured with recovered materials. By increasing the demand for such products, landfill space will be saved and pollution will be reduced."

50-5-61. State and local authorities to give preference to supplies, materials, and agricultural products produced in Georgia; determination as to reasonableness of preference.

(a) State and local authorities created by law, in the purchase of and contracting for any supplies, materials, equipment, and agricultural products, excluding beverages for immediate consumption, shall give preference as far as may be reasonable and practicable to such supplies, materials, equipment, and agricultural products as may be manufactured or produced in this state. Such preference shall not sacrifice quality.

(b) In determining whether such a preference is reasonable in any case where the value of a contract for or purchase of such supplies, materials, equipment, or agricultural products exceeds \$100,000.00, the state or local authority shall consider, among other factors, information submitted by the bidder which may include the bidder's estimate of the multiplier effect on gross state domestic product and the effect on public revenues of the state and the effect on public revenues of political subdivisions resulting from acceptance of a bid or offer to sell Georgia manufactured or produced goods as opposed to out-of-state manufactured or produced goods. Any such estimates shall be in writing. No state or local authority shall divide a contract or purchase which exceeds \$100,000.00 for the purpose of avoiding the requirements of this subsection.

(c) Nothing in this Code section shall negate the requirements of Code Section 50-5-73. (Ga. L. 1976, p. 181, § 1; Ga. L. 2009, p. 204, § 4/SB 44.)

The 2009 amendment, effective July 1, 2009, designated the existing provisions as subsection (a); in subsection (a), in the first sentence, inserted "excluding beverages for immediate consumption," and substituted "supplies, materials," for "materials, supplies" and, in the second sentence, deleted "price or" preceding "quality" at the end; and added subsections (b) and (c).

Editor's notes. — Ga. L. 2009, p. 204, § 6, not codified by the General Assembly, provides that: "This Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective." This Act became effective July 1, 2009.

JUDICIAL DECISIONS

Code Revision Commission is not state authority within meaning of this section. Harrison Co. v. Code Revision Comm'n, 244 Ga. 325, 260 S.E.2d 30 (1979).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 26.

50-5-62. Preference to local sellers of Georgia products.

Reserved. Repealed by Ga. L. 2009, p. 204, § 5/SB 44, effective July 1, 2009.

Editor's notes. — This Code section was based on Ga. L. 1937, p. 503, § 12.

Ga. L. 2009, p. 204, § 6, not codified by the General Assembly, provides that: "This

Act shall not be applied to impair an obligation of any contract entered into prior to the date this Act becomes effective." This Act became effective July 1, 2009.

50-5-63. Exclusive use of Georgia forest products in state construction contracts; exception where federal regulations conflict.

(a) No contract for the construction of, addition to, or repair of any facility, the cost of which is borne by the state or any department, agency, commission, authority, or political subdivision thereof, shall be let unless the contract contains a stipulation therein providing that the contractor or any subcontractor shall use exclusively Georgia forest products in the construction thereof, when forest products are to be used in such construction, addition, or repair, and if Georgia forest products are available.

(b) This Code section shall not apply when in conflict with federal rules and regulations concerning construction. (Ga. L. 1963, p. 552, §§ 1, 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 26.

50-5-64. Multiyear contracts authorized; standard form provisions; what funds obligated; interest.

(a) The Department of Administrative Services shall be authorized to execute on behalf of all state agencies subject to this part multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, services, and supplies, provided that any such contract shall be executed only on a standard form developed by the department for such use; and provided, further, that the standard form contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the user agency or the department at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed as provided in this Code section;

(2) The contract may be renewed only by a positive action taken by the user agency or by the department on behalf of the user agency, and the nature of such action shall be determined by the department and specified in its standard contract;

(3) The contract shall terminate immediately and absolutely at such time as appropriated and otherwise unobligated funds are no longer available to satisfy the obligations of the user agency under the contract. The determination of the occurrence of such unavailability of funds shall be made by the user agency in its sole discretion and shall be conclusive;

(4) The contract shall state the total obligation of the user agency for the fiscal year of execution and shall further state the total obligation which will be incurred in each fiscal year renewal term, if renewed; and

(5) The contract shall provide that title to any supplies, materials, or equipment shall remain in the vendor until fully paid for by the user agency.

(b) Any standard contract developed hereunder containing the provisions enumerated in subsection (a) of this Code section shall be deemed to obligate the user agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the user agency, for those sums payable in the individual fiscal year renewal term.

(c) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(d) Any such contract may provide for the payment by the user agency of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section. (Ga. L. 1979, p. 352, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 24, 139.

C.J.S. — 81A C.J.S., States, § 335 et seq.

50-5-65. Transfer of personal property titles to effectuate lease purchases; authority; form.

(a) The Department of Administrative Services is authorized to make transfers of title to personal property titled in the name of any department, agency, or institution of the state to private individuals, corporations, or firms for the purpose of effectuating lease purchases of such property between the owning department, agency, or institution and the private individuals, corporations, or firms. Transfers of title shall be made only in conjunction with the execution of a lease purchase agreement between an agency, department, or institution of the state and the transferee acquiring title; and the agreement shall be consummated on the standard agreement form developed pursuant to Code Section 50-5-64.

(b) The departments, agencies, and institutions of the state are authorized to accept the title to property, subject to a contract for lease purchase or installment purchase, upon execution of the aforementioned standard agreement by the Department of Administrative Services; and the department is authorized to transfer title back to the vendor in the name of the department, agency, or institution in the event that the agreement is not fully consummated. (Ga. L. 1980, p. 90, § 1.)

50-5-66. Department to compile and consolidate all estimates.

The Department of Administrative Services shall compile and consolidate all estimates of supplies, materials, and equipment needed and required by all state departments, institutions, and agencies to determine the total requirements of any given commodity. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3.)

50-5-67. Competitive bidding procedure; method of soliciting bids; required conditions for competitive sealed proposals; clarification; contract awards; negotiation of contracts; certificate of independent price determination; receiving electronic bids.

(a) Except as otherwise provided in this Code section, contracts exceeding \$100,000.00 shall be awarded by competitive sealed bidding. If the total requirement of any given commodity will involve an expenditure in excess of \$250,000.00, sealed bids shall be solicited by advertisement in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be solicited by advertisement in a newspaper of state-wide circulation at least once and at least 15 calendar days, except for construction projects which shall have 30 calendar days allowed, prior to the date fixed for opening of the bids and awarding of the contract. Other methods of advertisement, however, may be adopted by the Department of Administrative Services when such other methods are deemed more advantageous for the particular item to be purchased. In any event, it shall be the duty of the Department of Administrative Services to solicit sealed bids from reputable owners of supplies in all cases where the total requirement will exceed \$100,000.00. When it appears that the use of competitive sealed bidding is either not justified or not advantageous to the state, a contract may be entered into by competitive sealed proposals, subject to the following conditions:

(1) This method of solicitation shall only be used after a written determination by the Department of Administrative Services that the use of competitive sealed bidding is not justified or is not advantageous to the state;

(2) Proposals shall be solicited through a request for proposals;

(3) Adequate public notice of the request for proposals shall be given in the same manner as provided for competitive sealed bidding;

(4) A register of proposals shall be prepared and made available for public inspection;

(5) The request for proposals shall state the relative importance of price and other evaluation factors;

(6) As provided in the request for proposals and under regulations to be developed by the Department of Administrative Services, discussions may be conducted with qualified offerors who submit proposals determined to be reasonably susceptible of being selected for award, for the purpose of clarification to assure full understanding of and responsiveness to the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and clarification of proposals. After such clarifications, revisions may be permitted to technical proposals and price proposals prior to award for the purpose of obtaining best and final offers. The Department of Administrative Services is authorized to solicit multiple revisions to price proposals for the purpose of obtaining the most advantageous proposal to the state. In conducting discussions or soliciting any revisions, there shall be no disclosure of any information contained in proposals submitted by competing offerors. However, this prohibition on disclosure of information shall not prohibit the Department of Administrative Services from disclosing to competing offerors any preliminary rankings and scores of competing offerors' proposals during the course of any negotiations or revisions of proposals other than with respect to the procurement of construction contracts; and

(7) The award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the state, taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

(b) Except as otherwise provided for in this part, all contracts for the purchases of supplies, materials, equipment, or services other than professional and personal employment services made under this part shall, wherever possible, be based upon competitive bids and shall be awarded to the lowest responsible bidder, taking into consideration the quality of the articles to be supplied and conformity with the specifications which have been established and prescribed, the purposes for which the articles are required, the discount allowed for prompt payment, the transportation charges, and the date or dates of delivery specified in the bid and any other cost affecting the total cost of ownership during the life cycle of the supplies, materials, equipment, or services as specified in the solicitation document. Competitive bids on such contracts shall be received in accordance with rules and regulations to be adopted by the commissioner of administrative services, which rules and regulations shall prescribe, among

other things, the manner, time, and places for proper advertisement for the bids, indicating the time and place when the bids will be received; the article for which the bid shall be submitted and the specification prescribed for the article; the amount or number of the articles desired and for which the bids are to be made; and the amount, if any, of bonds or certified checks to accompany the bids. Any and all bids so received may be rejected.

(c)(1)(A) When bids received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible bid exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive bids, a contract may be negotiated pursuant to this Code section, provided that each responsible bidder who submitted such a bid under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the bids received are noncompetitive or the lowest responsible bid exceeds available funds, the negotiated price shall be lower than the lowest rejected bid of any responsible bidder under the original solicitation.

(B) With respect to procurement for construction contracts, if the bid from the lowest responsible and responsive bidder exceeds the funds budgeted for the contract, a contract may be negotiated with such apparent low bidder to obtain a contract price within the budgeted amount. Such negotiations may include changes in the scope of work and other bid requirements.

(2) When proposals received pursuant to this part are unreasonable or unacceptable as to terms and conditions, are noncompetitive, or the lowest responsible proposal exceeds available funds and it is determined in writing by the Department of Administrative Services that time or other circumstances will not permit or justify the delay required to resolicit competitive proposals, a contract may be negotiated pursuant to this Code section, provided that each responsible offeror who submitted such a proposal under the original solicitation is notified of the determination and is given a reasonable opportunity to negotiate. In cases where the proposals received are noncompetitive or the lowest responsible proposal exceeds available funds, any contract award made pursuant to this paragraph shall be made to the offeror whose negotiated proposal is most advantageous to the state according to the evaluation criteria in the request for proposals rather than to the offeror whose negotiated proposal offers the lowest price, provided that the negotiated price of the most advantageous proposal is lower than the price of the rejected responsible proposal with the lowest price under the original solicitation.

(d)(1) Except as otherwise provided for in this part, the Department of Administrative Services shall publish, prior to award or letting of the contracts, notice of its intent to award a contract to the successful bidder

or offeror on public display in a conspicuous place in the department's office, on the Georgia Procurement Registry, or both so that it may be easily seen by the public. The public notice on public display shall also state the price or the amount for which the contract may be awarded, the commodities or services to be covered by the contract which may be awarded, and the names of all persons whose bids, offers, or proposals were rejected by the department, together with a statement giving the reasons for the rejection.

(2) Every bid or proposal conforming to the terms of the advertisement provided for in this Code section, together with the name of the bidder, shall be recorded, and all such records with the name of the successful bidder or offeror indicated thereon shall, within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror, be subject to public inspection upon request.

(3) The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish the name of the successful bidder or offeror on public display in a conspicuous place in the department's office or on the Georgia Procurement Registry so that it may be easily seen by the public. The public notice on public display shall also show the price or the amount for which the contract was let and the commodities covered by the contract. The Department of Administrative Services shall also, within one day after the award or letting of the contract, publish on public display the names of all persons whose bids, offers, or proposals were rejected by it, together with a statement giving the reasons for such rejection.

(4) The Department of Administrative Services shall canvass the bids, offers, or proposals and award the contract according to the terms of this part. The Department of Administrative Services shall prepare a register of bids, offers, or proposals which will become available for public inspection upon request within one day after the issuance of the department's public notice of intent to award to the successful bidder or offeror. The bids, offers, or proposals shall not be subject to public disclosure until after the issuance of the public notice of intent to award a contract to the successful bidder or offeror except that audited financial statements not otherwise publicly available but required to be submitted in the bid, offer, or proposal shall not be subject to public disclosure.

(5) Records related to the competitive bidding and proposal process which, if disclosed prior to the issuance of the public notice of intent to award would undermine the public purpose of obtaining the best value for this state, shall not be subject to public disclosure until after the department's issuance of its public notice of intent to award a contract to the successful bidder or offeror. Such records include but are not limited to cost estimates, bids, proposals, evaluation criteria, vendor evaluations, negotiation documents, offers and counter-offers, and records revealing preparation for the procurement.

(6) A proper bond for the faithful performance of any contract shall be required of the successful bidder or offeror in the discretion of the Department of Administrative Services. After the contracts have been awarded, the Department of Administrative Services shall certify to the offices, agencies, departments, boards, bureaus, commissions, institutions, or other entities of the state the sources of the supplies and the contract price of the various supplies, materials, services, and equipment so contracted for.

(e) On all bids or proposals received or solicited by the Department of Administrative Services, by any office, agency, department, board, bureau, commission, institution, or other entity of the state or by any person in behalf of any office, agency, department, board, bureau, commission, institution, or other entity of the state except in cases provided for in Code Section 50-5-58, the following certificate of independent price determination shall be used:

“I certify that this bid, offer, or proposal is made without prior understanding, agreement, or connection with any corporation, firm, or person submitting a bid, offer, or proposal for the same materials, supplies, services, or equipment and is in all respects fair and without collusion or fraud. I understand collusive bidding is a violation of state and federal law and can result in fines, prison sentences, and civil damage awards. I agree to abide by all conditions of this bid, offer, or proposal and certify that I am authorized to sign this bid, offer, or proposal for the bidder or offeror.”

(f) Notwithstanding any other provision of this article, the commissioner of administrative services is authorized to promulgate rules and regulations to govern auctions conducted by state agencies in which vendors' prices are made public during the bidding process to enable the state agency or agencies to seek a lower price. This auction bidding process will continue until the lowest price is obtained within the auction's time limit. This auction bidding process shall not be used to procure construction services or for any contract for goods or services valued at less than \$100,000.00.

(g) Any reference in this article to sealed bids or sealed proposals shall not preclude the Department of Administrative Services from receiving bids and proposals by way of the Internet or other electronic means or authorizing state agencies from receiving bids and proposals by way of the Internet or other electronic means; provided, however, any bids or proposals received by any state agency by way of any electronic means must comply with security standards established by the Georgia Technology Authority. (Ga. L. 1937, p. 503, § 6; Ga. L. 1939, p. 160, § 3; Ga. L. 1978, p. 1054, §§ 1, 2; Ga. L. 1979, p. 659, §§ 4, 5; Ga. L. 1980, p. 90, § 2; Ga. L. 1991, p. 1380, § 1; Ga. L. 1996, p. 885, § 5; Ga. L. 1998, p. 1372, § 1; Ga. L. 2001, p. 792, § 1; Ga. L. 2003, p. 605, § 1; Ga. L. 2005, p. 117, § 13/HB 312; Ga. L. 2008, p. 230, §§ 3, 4/SB 175.)

The 2008 amendment, effective July 1, 2008, in subsection (b), in the first sentence, deleted “standard” preceding “specifications” near the middle, and substituted “materials, equipment, or services” for “materials, or equipment” near the end; designated the existing provisions of subsection (d) as paragraphs (d)(2) through (d)(4), and paragraph (d)(6); added paragraphs (d)(1) and (d)(5); in paragraph (d)(2), substituted “within one day after the issuance of the department’s public notice of intent to award to the successful bidder or offeror” for “after award or letting of the contract” near the end; and, in paragraph (d)(4), at the beginning of the first sentence, substituted “The Department of Administrative Services shall canvass” for “Bids, offers, or proposals shall be opened in public by the Department of Administrative Services, which shall canvass”, and added the last two sentences.

Cross references. — Letting of Department of Transportation construction and maintenance contracts by public bid, § 32-2-64 et seq. Public competitive bidding procedures for sales and leases of state property, § 50-16-39.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “shall prescribe” in the second sentence in subsection (b).

Pursuant to Code Section 28-9-5, in 1991, “15” was substituted for “fifteen” in the second sentence of subsection (a).

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

JUDICIAL DECISIONS

“Materials, supplies, or equipment.” — Publishing services are not “materials, supplies, or equipment” within meaning of this section. *Harrison Co. v. Code Revision Comm’n*, 244 Ga. 325, 260 S.E.2d 30 (1979).

Rights of rejected bidder. — Even in competitive sealed proposals under O.C.G.A. § 50-5-67(a), a rejected bidder

who alleges the proposal was conducted in an arbitrary and unfair manner falls within the zone of interest to be protected by the procurement laws. *Amdahl Corp. v. Georgia Dep’t of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

Cited in *Municipal Leasing Corp. v. Fulton County*, 835 F.2d 786 (11th Cir. 1988).

OPINIONS OF THE ATTORNEY GENERAL

Duty to award to lowest bidder. — Once department has considered all relevant factors, it must award the contract to the lowest bidder meeting the department’s standards; the department may not award a contract to a higher bidder if the products are equal in view of all relevant factors. 1974 Op. Att’y Gen. No. 74-16.

The phrase “lowest responsible bidder” has been almost unanimously construed by other jurisdictions to mean not merely “financially solvent,” but also “responsible”

with respect to the bidder’s overall ability to respond in quality and fitness to the particular requirements of the contract in question. 1974 Op. Att’y Gen. No. 74-16.

When department can in good faith point to some demonstrable or real factor which justifies the department’s conclusion that a higher dollar bid is nevertheless the “lowest responsible” bid, the department has properly exercised the department’s discretionary power. 1974 Op. Att’y Gen. No. 74-16.

Discretion to consider factors other than

price. — This section clearly vests considerable discretion in department to consider factors other than price, and, in fact, directs the department to consider these factors. 1974 Op. Att'y Gen. No. 74-16.

Specifications not to arbitrarily exclude potential vendors. — The proper execution of the duties of the department demands that the department determine to the best of the department's ability that specifications (either those suggested by the requisitioning agency or those developed by the department) do not arbitrarily exclude potential vendors, and that no other vendor can in fact meet all applicable and reasonable specifications; only when these duties are properly executed do the exceptions relating to available sources become operative so as to allow the department to forego the requirement of bid solicitation. 1974 Op. Att'y Gen. No. 74-16.

Where only one product can meet applicable specifications, there is no necessity to solicit bids from other suppliers of such

products since this would be a useless act. 1974 Op. Att'y Gen. No. 74-16.

When product is available from one source only there is no necessity to solicit bids from other suppliers. 1974 Op. Att'y Gen. No. 74-16.

Requiring that bidder be member of private organization. — State may not require that bidder be member of private organization, but it may require that bidder be properly licensed and insured. 1958-59 Op. Att'y Gen. p. 310.

Public works contracts subject to provisions. — A contract entered into by the environmental protection division for reclamation and rehabilitation of land subjected to surface mining constitutes a public works contract, and is subject to the provisions of Ga. L. 1939, p. 160, § 3 and Ga. L. 1964, p. 693, § 1, (see O.C.G.A. §§ 50-5-67 and 50-5-72). 1976 Op. Att'y Gen. No. 76-98.

Georgia State Financing and Investment Commission is not required to obtain bids on construction contracts. 1975 Op. Att'y Gen. No. 75-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 29 et seq., 57 et seq.

C.J.S. — 81A C.J.S., States, § 270 et seq.

ALR. — Bidder's variation from specifications on bid for public work, 65 ALR 835.

Evasion of law requiring contract for public work to be let to lowest responsible bidder by subsequent changes in contract after it has been awarded pursuant to that law, 69 ALR 697.

What is an "emergency" within charter or statutory provision excepting emergency contract or work from requirement of bidding on public contracts, 71 ALR 173.

Right to award public contract to one other than lowest financial bidder as affected by fact that bidder furnishes bond, 86 ALR 131.

Labor conditions or relations as factor in determining lowest responsible bidder for public contract or as factor in determining whether public contract should be let to lowest bidder, 110 ALR 1406.

Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

Contract for personal services as within requirement of submission of bids as condition of public contract, 15 ALR3d 733.

Public contracts: low bidder's monetary relief against state or local agency for nonaward of contract, 65 ALR4th 93.

Authority of state, municipality, or other governmental entity to accept late bids for public works contracts, 49 ALR5th 747.

50-5-68. Prequalification of prospective suppliers.

Prospective suppliers may be prequalified for particular types of supplies, services, goods, materials, and equipment at the discretion of the Department of Administrative Services. Solicitation mailing lists of potential contractors shall include, but shall not be limited to, such prequalified

suppliers. The award of contracts, however, may be conditioned upon prequalification. (Ga. L. 1980, p. 90, § 3.)

50-5-69. Purchases without competitive bidding; central bid registry; procurement cards; rules and regulations; applicability to emergency purchases; Purchasing Advisory Council.

(a) If the needed supplies, materials, equipment, or service can reasonably be expected to be acquired for less than \$5,000.00 and is not available on state contracts or through statutorily required sources, the purchase may be effectuated without competitive bidding. The commissioner of administrative services may by rule and regulation authorize the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf and may provide the circumstances and conditions under which such purchases may be effected. In order to assist and advise the commissioner of administrative services in making determinations to allow offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state to make purchases in their own behalf, there is created a Purchasing Advisory Council consisting of the executive director of the Georgia Technology Authority or his or her designee; the director of the Office of Planning and Budget or his or her designee; the chancellor of the University System of Georgia or his or her designee; the commissioner of technical and adult education or his or her designee; the commissioner of transportation or his or her designee; the Secretary of State or his or her designee; the commissioner of human services or his or her designee; the commissioner of community health or his or her designee; and one member to be appointed by the Governor. The commissioner of administrative services shall promulgate the necessary rules and regulations governing meetings of such council and the method and manner in which such council will assist and advise the commissioner of administrative services.

(b) The department shall establish a central bid registry to advertise the various procurement and bid opportunities of state government. Such central bid registry shall be entitled the Georgia Procurement Registry and shall operate in accordance with appropriate rules and regulations applicable to the department's responsibility to manage the state's procurement system. It shall be the responsibility of each agency, department, board, commission, authority, and council to report to the department its bid opportunities in a manner prescribed by the Department of Administrative Services. The commissioner of administrative services is authorized and directed to promulgate rules and regulations to carry out this responsibility and shall determine the most economical method to conduct public notification of such bid opportunities.

(c) The Department of Administrative Services is authorized to permit departments, institutions, and agencies of state government to utilize a

procurement card that will electronically pay and monitor payments by state institutions pursuant to subsection (a) of this Code section subject to approval of the State Depository Board pursuant to the State Depository Board's authority to prescribe cash management policies and procedures for state agencies under Code Section 50-17-51. All purchases made through procurement card shall be included on a monthly summary report to be prepared by each state department, institution, and agency in a form to be approved by the Department of Administrative Services.

(d) The commissioner of administrative services shall promulgate rules and regulations necessary to carry out the intent of this Code section.

(e) Nothing in this Code section shall apply to or affect the laws, rules, and regulations governing emergency purchases. (Ga. L. 1976, p. 752, § 1; Ga. L. 1980, p. 90, § 4; Ga. L. 1983, p. 520, § 1; Ga. L. 1996, p. 885, § 6; Ga. L. 1998, p. 1372, § 2; Ga. L. 2001, p. 792, § 2; Ga. L. 2005, p. 117, § 13A/HB 312; Ga. L. 2009, p. 453, § 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "commissioner of human services" for "commissioner of human resources" in the next-to-last sentence of subsection (a).

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and re-

quirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

RESEARCH REFERENCES

ALR. — Determination of amount involved in contract within statutory provision requiring public contracts involving sums

exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

50-5-70. Purchases for county boards of education.

Boards of education of the various counties of this state may petition the Department of Administrative Services to purchase their supplies, such as school buses, bus bodies, tires, parts, and other equipment under the rules set out in this part. (Ga. L. 1939, p. 160, § 3.)

Cross references. — Transportation of pupils by school buses generally, § 20-2-1070 et seq.

50-5-71. Emergency purchases authorized; report of circumstances.

In case of any emergency arising from any unforeseen causes, including delay by contractors, delay in transportation, breakdown in machinery, unanticipated volume of work, or upon the declaration of a state of emergency by the Governor, the Department of Administrative Services or any other office, agency, department, board, bureau, commission, institution, or other entity of the state to which emergency purchasing powers have been granted by the Department of Administrative Services shall have power to purchase in the open market any necessary supplies, materials, services, or equipment for immediate delivery to any office, agency, department, board, bureau, commission, institution, or other entity of the state. A report on the circumstances of the emergency and the transactions thereunder shall be duly recorded in a book or file to be kept by the Department of Administrative Services. (Ga. L. 1937, p. 503, § 9; Ga. L. 1939, p. 160, § 5; Ga. L. 1996, p. 922, § 1; Ga. L. 2005, p. 117, § 14/HB 312.)

OPINIONS OF THE ATTORNEY GENERAL

Petroleum credit card purchases authorized. — Commissioner may legally approve and instigate a program of petroleum credit card purchases by state employees for state-owned automotive vehicles and pro-

mulgate reasonable rules and regulations for administering such a system of purchases, providing such purchases are emergency purchases. 1967 Op. Att'y Gen. No. 67-219.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 38.

ALR. — What is an "emergency" within charter or statutory provision excepting

emergency contract or work from requirement of bidding on public contracts, 71 ALR 173.

50-5-72. Construction and public works contracts conducted by department; exceptions.

Notwithstanding any other provision of this part or any other law dealing with the subject matter contained in this Code section to the contrary, all construction or public works contracts, exceeding a total expenditure of \$100,000.00, of any department, board, bureau, commission, office, or agency of the state government, except as provided in this Code section, shall be conducted and negotiated by the Department of Administrative Services in accordance with this part; provided, however, that any expenditure of less than \$100,000.00 shall still be subject to review and approval by the Department of Administrative Services, which may approve noncompetitive expenditures of up to \$100,000.00. All advertising costs incurred in connection with such contracts shall be borne by and paid from the funds

appropriated to and available to the department, board, bureau, commission, office, or agency of the state government for which the contract is negotiated. The commissioner of administrative services is authorized and directed to promulgate such rules and regulations as shall carry out the additional duties and responsibilities placed upon the department by this Code section. Nothing contained in this Code section shall apply to or affect the Department of Transportation, the several public authorities of this state, including the Stone Mountain Memorial Association and the Board of Regents of the University System of Georgia, or the expenditure of money credited to the account of this state in the Unemployment Trust Fund by the secretary of the treasury of the United States pursuant to Section 903 of the Social Security Act and appropriated as provided in Code Section 34-8-85. No contract in existence on March 18, 1964, shall be affected by this Code section and such contract may continue to be utilized. (Ga. L. 1964, p. 693, § 1; Ga. L. 1991, p. 139, § 3; Ga. L. 1996, p. 885, § 7.)

Cross references. — Letting of Department of Transportation construction and maintenance contracts by public bid, § 32-2-64 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “secretary of the treasury” was substituted for “Secretary of the Treasury” in the fourth sentence.

Editor’s notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: “This Act shall be known and may be cited as the ‘Purchasing Reform Act of 1996.’”

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: “The General Assembly declares and finds that many of the laws establishing guidelines and re-

quirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs.”

U.S. Code. — Section 903 of the Social Security Act, referred to in this Code section, is codified as 42 U.S.C. § 1103.

OPINIONS OF THE ATTORNEY GENERAL

Public works contracts. — A contract entered into by the environmental protection division for reclamation and rehabilitation of land subjected to surface mining constitutes a public works contract, and is subject to the provisions of Ga. L. 1939, p. 160, § 3 and Ga. L. 1964, p. 693, § 1 (see O.C.G.A. §§ 50-5-67 and 50-5-72). 1976 Op. Att’y Gen. No. 76-98.

Contracts for demolition of building would constitute public works contracts. 1967 Op. Att’y Gen. No. 67-271.

Obligating other agency’s funds. — This

section only provides express authority to conduct and negotiate; there is no express authority to execute contracts. Thus, the Department of Administrative Services does not have the authority to obligate the funds of another state agency for construction or public works contracts. 1980 Op. Att’y Gen. No. 80-99.

Georgia State Financing and Investment Commission is not required to obtain bids on construction contracts. 1975 Op. Att’y Gen. No. 75-58.

RESEARCH REFERENCES

ALR. — Determination of amount involved in contract within statutory provision requiring public contracts involving sums exceeding specified amounts to be let to lowest bidder, 53 ALR2d 498.

Waiver of competitive bidding requirements for state and local public building and construction contracts, 40 ALR4th 968.

50-5-73. Goods and services to be obtained from correctional industries when certified as available.

(a) All services provided or goods, wares, or merchandise produced wholly or in part by the Georgia Correctional Industries Administration and needed by the departments, institutions, and agencies of the state and its political subdivisions supported wholly or in part by public funds shall be obtained from the Georgia Correctional Industries Administration where such services, goods, wares, or merchandise have been certified in writing by the commissioner of corrections as available and of competitive quality and price. Where not certified as available from the Georgia Correctional Industries Administration, services, goods, wares, or merchandise shall be obtained from other agencies or activities of the state which are legally authorized to engage in the provision of such and have certified the availability with the advice and consent of the Department of Administrative Services.

(b) The Georgia Correctional Industries Administration and the commissioner of corrections shall report to the Department of Administrative Services the certification criteria, including but not limited to cost, delivery schedules, and availability within 15 days of notice of certification.

(c) The Georgia Correctional Industries Administration shall notify the Department of Administrative Services of any changes to certified products or services available pursuant to this Code section within 15 days of any such changes. (Ga. L. 1937, p. 503, § 16; Ga. L. 1975, p. 488, § 1; Ga. L. 1978, p. 1054, § 3; Ga. L. 1985, p. 283, § 1; Ga. L. 1996, p. 885, § 8.)

Cross references. — Georgia Correctional Industries Administration generally, Ch. 10, T. 42.

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies,

materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

OPINIONS OF THE ATTORNEY GENERAL

Purpose of this section is to remove the purchase of goods manufactured by the Georgia Correctional Industries Administration or other agencies included in this section from having to be purchased through sealed competitive bidding. 1960-61 Op. Att'y Gen. p. 440.

Georgia Correctional Industries Administration must utilize department in buying raw materials which will be used in the manufacture and production of products for resale. 1967 Op. Att'y Gen. No. 67-316.

Factory for the Blind also covered by O.C.G.A. § 50-5-73. — The Georgia Factory

for the Blind is one of the other agencies or activities of the state within the meaning of this section. 1960-61 Op. Att'y Gen. p. 440.

Contracts with department for manufacture of license plates. — The Department of Offender Rehabilitation (now Department of Corrections) is under an affirmative responsibility to negotiate with the Department of Administrative Services for the contract for the manufacture of license plates, and, in this regard, to advise all participating agencies as to the material specifications which will best utilize existing equipment. 1969 Op. Att'y Gen. No. 69-435.

50-5-74. Goods and services to be obtained from sheltered workshops and training centers when certified available; standards for certification of availability.

Reserved. Repealed by Ga. L. 1993, p. 1736, § 3, effective February 8, 1994.

Editor's notes. — Ga. L. 1993, p. 1736, § 1, provided for the repeal of this Code section. Ga. L. 1993, p. 1736, § 3, provided: "This Act shall become effective only when funds are specifically appropriated for purposes of this Act in an appropriations Act

making specific reference to this Act." Such funds were appropriated at the 1994 session, effective February 8, 1994.

This Code section was based on Ga. L. 1979, p. 1318, §§ 1, 2.

50-5-75. Lease or construction of warehouse space authorized.

The Department of Administrative Services may rent or lease any warehouse space necessary for a period not to exceed five years, provided the Department of Administrative Services may construct any warehouse on state property only. (Ga. L. 1939, p. 160, § 11.)

50-5-76. All tax stamps, tags, and paraphernalia evidencing the payment of tax to be purchased by department; requisition and payment.

(a) All cigarette tax stamps, loose or smokeless tobacco tax stamps, fertilizer tax tags, and other stamps, tags, and paraphernalia evidencing the payment of tax collected by the state or any department thereof shall be purchased by the Department of Administrative Services subject to the requisition of any department of the state requiring the use of the tax stamps or tags.

(b) Any department requiring tax stamps or stamps, tags, or paraphernalia from the Department of Administrative Services shall make a requisition therefor to the Department of Administrative Services upon forms

prescribed by it, which requisition shall be delivered to the state auditor for compilation and check. The tax stamps, fertilizer tax tags, or other stamps, tags, or paraphernalia described in this part and purchased by the Department of Administrative Services shall be paid for by the department for whose use they are purchased. (Ga. L. 1937-38, Ex. Sess., p. 184, § 1, 2; Ga. L. 2003, p. 665, § 43.)

Cross references. — Property tax exemptions for fertilizers, § 48-5-43. Cigarette taxes generally, Ch. 11, T. 48.

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may

be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

50-5-77. Multiyear lease, purchase, or lease purchase contracts; required provisions for contracts; calculation and application of savings or enhanced revenues; external oversight committee; annual report.

(a) As used in this Code section, the term:

(1) "Agency" means every state department, agency, board, bureau, and commission including without limitation the Board of Regents of the University System of Georgia.

(2) "Benefits based funding project" means any governmental improvement project in which payments to vendors depend upon the realization of specified savings or revenue gains attributable solely to the improvements, provided that each benefits based funding project is structured as follows:

(A) The vendor promises, or accepts the condition, that the improvements will generate actual and quantifiable savings or enhanced revenues;

(B) The agency develops a measurement tool for calculating the savings or enhanced revenues realized from the project; and

(C) The funding for the project shall be attributable solely to its successful implementation for the period specified in the contract.

(3) "External oversight committee" means a committee composed of the executive director of the Georgia Technology Authority, the commissioner of administrative services, the director of the Office of Planning and Budget, the state auditor, the Governor's designee, the chairperson of the House Committee on Appropriations, and the chairperson of the Senate Finance Committee.

(4) "Measurement tool" means the formula used to measure the actual savings or enhanced revenues and includes a means for distinguishing enhanced revenue or savings from normal activities, including the possibility of no savings or revenue growth or an increased expendi-

ture or decline in revenue. Baseline parameters must be defined based on historical costs or revenues for a minimum of one year. The measurement tool shall use the baseline parameters to forecast savings or enhanced revenues and to determine the overall benefits and fiscal feasibility of the proposed project.

(5) "Special dedicated fund" means any fund established pursuant to this Code section from which the vendor or vendors are compensated as part of a benefits based funding project. The moneys in the special dedicated fund shall be deemed contractually obligated and shall not lapse at the end of each fiscal year.

(b) An agency shall be authorized to enter into multiyear lease, purchase, or lease purchase contracts of all kinds for the acquisition of goods, materials, real or personal property, services, and supplies as benefits based funding projects; provided, however, that a condition precedent to the award of the contract is a competitive solicitation in compliance with any applicable purchasing laws now or hereafter enacted, including without limitation the provisions of this chapter and Chapter 25 of this title; and provided, further, that the contract shall contain provisions for the following:

(1) The contract shall terminate absolutely and without further obligation on the part of the agency at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(2) The contract shall terminate absolutely and without further obligation on the part of the agency at such time as the agency determines that actual savings or incremental revenue gains are not being generated to satisfy the obligations under the contract;

(3) The contract may be renewed only by a positive action taken by the agency;

(4) The contract shall state the total obligation of the agency for repayment for the fiscal year of execution and shall state the total obligation for repayment which will be incurred in each fiscal year renewal term, if renewed;

(5) The term of the contract, including any renewal periods, may not exceed ten years; and

(6) The agency's financial obligations under the contract are limited to and cannot exceed the savings or incremental revenue gains, as calculated using the measurement tool, actually generated by the benefits based funding project, even if no savings or enhanced revenues are realized from the project.

(c) Any contract developed under this Code section containing the provisions enumerated in subsection (b) of this Code section shall be

deemed to obligate the agency only for those sums payable during the fiscal year of execution or, in the event of a renewal by the agency, for those sums payable in the individual fiscal year renewal term and only to the extent that savings or enhanced revenues are attributable to the benefits based funding project calculated using the measurement tool.

(d) No contract developed and executed pursuant to this Code section shall be deemed to create a debt of the state for the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal.

(e) Any such contract may provide for the payment by the agency of interest or the allocation of a portion of the contract payment to interest, provided that the contract is in compliance with this Code section.

(f) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, periodically calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project. To the extent that savings or enhanced revenues are realized, the agency shall transfer from its budget into the special dedicated fund an amount up to but not to exceed the amount owed on the contract for the then current fiscal year term's obligation to provide for payments.

(g) During the term of the contract, including any renewal periods, the agency shall, using the measurement tool, calculate the total amount of the savings or enhanced revenues attributable to the implementation of the benefits based funding project during the then current fiscal year at least 30 days prior to the end of the then current fiscal year. If the agency renews the contract and to the extent that savings or enhanced revenues are realized in excess of the amount due on the contract in the then current fiscal year term, the agency shall transfer prior to the end of the then current fiscal year from its budget into the special dedicated fund an amount up to but not to exceed the next fiscal year's obligation to provide for future payments.

(h) Promptly upon nonrenewal, termination, or expiration of the contract, any moneys remaining in the special dedicated fund shall be deposited in the general fund of the state.

(i) Each agency is authorized to accept title to property subject to the benefits based funding contract and is authorized to transfer title back to the vendor in the event the contract is not fully consummated.

(j) The external oversight committee shall have the responsibility to review and advise:

- (1) The overall feasibility of the benefits based funding project;
- (2) The measurement tool;

- (3) The projected savings or enhanced revenues; and
- (4) The dollars to be set aside for vendor payments.

(k) Each benefits based funding project and the proposed contract shall be approved by the external oversight committee prior to execution of the contract and prior to any renewal thereof.

(l) Each agency shall prepare an annual report to be sent to the external oversight committee, the Governor, and the General Assembly on all contracts entered into pursuant to this Code section, describing the benefits based funding project, its progress, its savings or enhanced revenues, and such other information as may be relevant. (Code 1981, § 50-5-77, enacted by Ga. L. 2003, p. 439, § 1.)

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

Former Code Section 50-5-77 (Ga. L. 1939, p. 160, § 9), relating to the attachment of delivery receipts and purchase orders to paid invoices, was repealed by Ga. L. 1996, p. 885, § 9, effective July 1, 1996.

Former Code Section 50-5-77 (Ga. L. 1939, p. 160, § 9), relating to the attachment of delivery receipts and purchase orders to paid invoices, was repealed by Ga. L. 1996, p. 885, § 9, effective July 1, 1996.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1939, p. 160, § 9, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Exception for federal purchases. — The purchase of federal property under Ga. L. 1945, p. 394, §§ 1-4 is an exception to the general purchasing law of this state. 1960-61 Op. Att'y Gen. p. 442 (decided under Ga. L. 1939, p. 160, § 9).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 377 et seq.

50-5-78. Financial interest of department personnel in contracts; acceptance of benefits from contractors; penalty; removal from office.

(a) Neither the commissioner of administrative services, nor any assistant of his, nor any employee of the department shall be financially interested or have any personal beneficial interest either directly or indirectly in the purchase of or contract for any materials, equipment, or supplies, nor in any such firm, corporation, partnership, or association furnishing any such supplies, materials, or equipment to the state govern-

ment or any of its departments, institutions, or agencies. Except as provided in subsection (b) of this Code section, it shall be unlawful for the commissioner of administrative services or any of his assistants or any employee of the department to accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded any money or anything of more than nominal value or any promise, obligation, or contract for future reward or compensation.

(b) Nothing in this Code section shall preclude the commissioner or any of his assistants or any employee of the department from attending seminars, courses, lectures, briefings, or similar functions at any manufacturer's or vendor's facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the commissioner, assistant, or employee with knowledge and information relative to the manufacturer's or vendor's products or services and is one which the commissioner determines would be of benefit to the department and to the state. In connection with any such seminar, course, lecture, briefing, or similar function, nothing in this Code section shall preclude the commissioner, assistant, or employee from receiving meals from a manufacturer or vendor. Nothing in this Code section shall preclude the commissioner, assistant, or employee from receiving educational materials and business related items of not more than nominal value from a manufacturer or vendor.

(c) Nothing contained in this Code section shall permit the commissioner, assistant, or employee to accept free travel from the manufacturer or vendor outside the State of Georgia or free lodging in or out of the State of Georgia.

(d) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. Any person who violates subsection (a) of this Code section shall be subject to being removed from office. (Ga. L. 1937, p. 503, § 15; Ga. L. 1983, p. 546, § 1; Ga. L. 1984, p. 22, § 50.)

Cross references. — Conflicts of interest involving public officers and employees generally, § 45-10-20 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 25.

C.J.S. — 81A C.J.S., States, § 328 et seq.

50-5-79. Purchase contracts contrary to part void and officers personally liable.

Whenever any department, institution, or agency of the state government required by this part and the rules and regulations adopted pursuant to this part applying to the purchase of supplies, materials, or equipment through the Department of Administrative Services shall contract for the purchase of such supplies, materials, or equipment contrary to this part or the rules and regulations made pursuant to this part, such contract shall be void and of no effect. If any official of such department, institution, or agency willfully purchases or causes to be purchased any supplies, materials, or equipment contrary to this part or the rules and regulations made pursuant to this part, such official shall be personally liable for the cost thereof; and, if such supplies, materials, or equipment are so unlawfully purchased and paid for out of the state funds, the amount thereof may be recovered in the name of the state in an appropriate action instituted therefor. (Ga. L. 1937, p. 503, § 10; Ga. L. 1991, p. 1380, § 2; Ga. L. 1992, p. 6, § 50.)

JUDICIAL DECISIONS

Inapplicable to department's contracts for department's own purchases. — O.C.G.A. § 50-5-79 only applies to contracts entered by agencies required to purchase supplies through the Department of Administrative

Services; the statute does not apply to contracts that the department enters for the department's own purchases. *Amdahl Corp. v. Georgia Dep't of Admin. Serv.*, 260 Ga. 690, 398 S.E.2d 540 (1990).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 25.

C.J.S. — 81A C.J.S., States, § 328 et seq.

50-5-80. Unlawful to use resources or methods established pursuant to this article to obtain anything of value for personal benefit or gain; penalties for violators; applicability.

(a) As used in this Code section, the term "person" includes natural persons, firms, partnerships, corporations, or associations.

(b) It shall be unlawful for any person to obtain for his or her own personal benefit, or for the benefit of any other person, any goods, services or other things of value, through any resource or method established pursuant to this article, including, but not limited to, purchase orders, government contracts, credit cards, charge cards, or debit cards.

(c)(1) Any person who violates subsection (b) of this Code section by obtaining any goods, services, or other things of value in the aggregate value of less than \$500.00 shall be guilty of a misdemeanor of a high and

aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00. In addition to the foregoing criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution to the state equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(2) Any person who violates subsection (b) of this Code section by obtaining any goods, services, or other things of value in the aggregate value of \$500.00 or more shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of such unlawful purchases, whichever is greater. In addition to the foregoing criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each such unlawful purchase was made.

(d)(1) Any person who knowingly assists another person in violating subsection (b) of this Code section shall be guilty of a misdemeanor of a high and aggravated nature which shall be punishable by not more than 12 months' imprisonment and a fine not to exceed \$5,000.00 if the unlawfully purchased goods, services, or other things of value are valued in the aggregate of less than \$500.00. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution equal to the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(2) Any person who knowingly assists another person in violating subsection (b) of this Code section shall be guilty of a felony which shall be punishable by not less than one nor more than 20 years' imprisonment and a fine not to exceed \$50,000.00 or triple the amount of the unlawful purchases, whichever is greater, if the goods, services, or other things of value are in the aggregate value of \$500.00 or more. In addition to such criminal penalties, any such person shall also be subject to immediate termination of state employment and shall owe restitution for the amount of such unlawful purchases, plus interest to be assessed at a rate of 12 percent per annum to be calculated from the date each unlawful purchase was made.

(e) This Code section shall not apply to any official employee purchase program for technology resources facilitated by and through the Georgia Technology Authority for state employees and public school employees of county or independent boards of education. (Ga. L. 1939, p. 160, §§ 10,

10a, 10b, 10c; Ga. L. 1996, p. 885, § 10; Ga. L. 2005, p. 117, § 15/HB 312; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2008, p. 776, § 1/HB 1113.)

The 2008 amendment, effective May 14, 2008, for the purpose of promulgating rules and regulations, policies, procedures, and manuals, and July 1, 2008, for all other purposes, rewrote subsections (b), (c), and (d). See the Editor's note for applicability.

Editor's notes. — Ga. L. 1996, p. 885, § 1, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Purchasing Reform Act of 1996.'"

Ga. L. 1996, p. 885, § 2, not codified by the General Assembly, provides: "The General Assembly declares and finds that many of the laws establishing guidelines and requirements for the purchasing of supplies, materials, and equipment by and for state

departments and agencies were developed decades earlier and prior to the increase in available sources of supply and the expansion of technology. It is the intent of the General Assembly that these laws be amended to reflect these changes in order to provide greater flexibility for state agencies to make their purchases and to eliminate unnecessary bureaucracy which can result in purchase delays and increased administrative costs."

Ga. L. 2008, p. 776, § 4, not codified by the General Assembly, provides that the amendment to this Code section shall apply to all transactions occurring on and after July 1, 2008.

JUDICIAL DECISIONS

Cited in *Phillips v. State*, 127 Ga. App. 499, 194 S.E.2d 278 (1972).

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

Clothing purchases for children at center through department. — A proposed clothing purchase policy of a Georgia Youth Development Center to allow the students at the

center to engage in selective buying by arranging with the supervisor of purchases (now commissioner) to budget a specified total from the center's budget to be spent for clothes and shoes per quarter at one or more of the local department stores designated in advance by the commissioner cannot be conducted by or through the office of the commissioner. 1968 Op. Att'y Gen. No. 68-8.

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 50-5-80(b) are designated as offenses for which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 253, 262, 265, 346, 375. 64 Am. Jur. 2d, Public Works and Contracts, § 25.

C.J.S. — 81A C.J.S., States, § 328 et seq.

50-5-81. Unlawful for agencies or subdivisions to purchase other than United States produced beef; exceptions; penalty.

(a) It shall be unlawful for the state; any branch, department, agency, board, or commission of the state; any county, municipality, board of education, or other political subdivision; or any officer, agent, or employee of any of the foregoing to purchase or authorize the purchase of any beef other than beef raised and produced within the United States when the purchase is to be made with governmental funds. This Code section shall not apply to canned meat which is not available from a source within the United States and which is not processed in the United States.

(b) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1976, p. 1650, §§ 1, 2.)

50-5-82. “State agency” defined; limitations on contracting for goods; role of Department of Revenue.

(a) As used in this Code section, the term “state agency” means any authority, board, department, instrumentality, institution, agency, or other unit of state government. “State agency” shall not include any county, municipality, or local or regional governmental authority.

(b) On or after May 13, 2004, the Department of Administrative Services and any other state agency to which this article applies shall not enter into a state-wide contract or agency contract for goods or services, or both, in an amount exceeding \$100,000.00 with a nongovernmental vendor if the vendor or an affiliate of the vendor is a dealer as defined in paragraph (3) of Code Section 48-8-2, or meets one or more of the conditions thereunder, but fails or refuses to collect sales or use taxes levied under Chapter 8 of Title 48 on its sales delivered to Georgia.

(c) The Department of Administrative Services and any other state agency may contract for goods or services, or both, with a source prohibited under subsection (b) of this Code section in the event of an emergency or where the nongovernmental vendor is the sole source of such goods or services or both.

(d) The determination of whether a vendor is a prohibited source shall be made by the Department of Revenue, which shall notify the Department of Administrative Services and any other state agency of its determination within three business days of a request for such determination.

(e) Prior to awarding a contract, the Department of Administrative Services and any other state agency to which this article applies shall provide the Department of Revenue the name of the nongovernmental vendor awarded the contract, the name of the vendor’s affiliate, and the certificate of registration number as provided for under Code Section

48-8-59 for the vendor and affiliate of the vendor. (Code 1981, § 50-5-82, enacted by Ga. L. 2004, p. 424, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “any” was deleted preceding “local or” near the end of subsection (a); “May 13, 2004” was substi-

tuted for “the effective date of this Code section” in subsection (b); and “of this Code section” was inserted in subsection (c).

50-5-83. Definitions; requirements for state purchasing card program.

(a) As used in this Code section, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Purchasing card” means a credit or debit card issued by a credit card company, bank, or other financial institution and provided by the State of Georgia or any of its departments or agencies under the State of Georgia Purchasing Card Program to state employees for the purpose of making purchases on behalf of such departments or agencies or the state.

(b) Any purchasing card program established by the department or by any other department or agency of the state shall conform to the following requirements:

(1) Purchasing cards shall only be issued to state employees whose job duties require the use of a purchasing card;

(2) Each department or agency of the state that allows the use of purchasing cards by its employees shall develop policies and procedures consistent with guidelines developed by the department pursuant to this Code section to identify those job positions within each department or agency of the state that would require the use of a purchasing card;

(3) Each employee receiving a purchasing card shall be required to sign an ethical behavior agreement for the use of the card which shall be developed by the department;

(4) Each department or agency of the state that allows its employees to use purchasing cards shall provide for the review of all purchases on such cards, shall maintain receipts for each purchase, and shall maintain a log showing each purchase, the relevant vendor’s name, the item purchased, the date of the purchase, the amount of the purchase, the name of the employee making the purchase, and any other information that shall be specified by the department;

(5) Purchases made on purchasing cards shall be reviewed and approved by supervisory personnel at least quarterly;

(6) Purchasing cards shall not be used for items over \$5,000.00 unless the item is:

(A) Purchased pursuant to a valid state contract; and

(B) Purchased in compliance with state procurement policy;

(7) Purchasing cards shall not be used to purchase gift cards;

(8) Purchasing cards shall not be used to purchase alcoholic beverages, tobacco products, or personal items that are not job related, and state contracts for purchasing cards shall contain such prohibitions on the use of such purchasing cards;

(9) The department shall develop a training manual on the use of purchasing cards which shall instruct users of purchasing cards on the maximum value utilization of such purchasing cards and employees who use such purchasing cards shall comply with the provisions of such manual;

(10) Departments and agencies of the state shall review not less than annually all purchasing cards issued to their employees and shall eliminate purchasing cards for employees who demonstrate consistently low usage of such purchasing cards;

(11) Departments and agencies of the state which have more than 100 purchasing cards issued to employees shall establish goals to reduce such number of purchasing cards by at least 10 percent by December 31, 2009;

(12) Employees hired for job positions for which purchasing cards are issued shall be subjected to criminal background checks before hiring and a credit check shall be completed by the hiring department or agency on all employees to whom a purchasing card is issued prior to issue;

(13) Purchasing cards shall be issued only to employees of departments and agencies of the state and no purchasing cards shall be issued to employees of foundations associated with departments and agencies of the state;

(14) Each purchase made with a purchasing card shall be accompanied by a receipt or other documentation listing each item purchased, the purchase price for each item, and any taxes, fees, or other amounts paid in connection with such purchase; and

(15) With respect to any purchase made with a purchasing card, if the employee to whom such card was issued does not provide documentation meeting the requirements of paragraph (14) of this subsection to his or her supervisor for recording on the purchasing log required to be maintained as provided in paragraph (4) of this subsection, such employee shall be personally responsible for such purchase.

(c) Any employee of a department or agency of the state who knowingly:

(1) Uses a purchasing card for personal gain;

(2) Purchases items on such purchasing card that are not authorized for purchase by such employee;

(3) Purchases items in violation of this Code section; or

(4) Retains for such employee's personal use a rebate or refund from a vendor, bank, or other financial institution for a purchase or the use of a purchasing card

shall be subject to immediate termination of employment, restitution for the amount of the improper purchases, and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(d) An employee's supervisor who knowingly intentionally, willfully, wantonly, or recklessly allows or who conspires with an employee who is issued a purchasing card to violate subsection (c) of this Code section shall be subject to immediate termination of employment and criminal prosecution. Any person violating this subsection shall be guilty of a misdemeanor of a high and aggravated nature if the value of the items improperly purchased or retained is less than \$500.00 in the aggregate and shall be guilty of a felony if the value of the items improperly purchased or retained is \$500.00 or more in the aggregate and, upon conviction of such felony, shall be sentenced to not less than one nor more than 20 years' imprisonment, a fine not to exceed \$50,000.00, or both.

(e) The department is authorized to promulgate such rules and regulations as necessary to implement this Code section. (Code 1981, § 50-5-83, enacted by Ga. L. 2008, p. 776, § 2/HB 1113; Ga. L. 2009, p. 8, § 50/SB 46.)

Effective date. — This Code section became effective May 14, 2008, for the purpose of promulgating rules and regulations, policies, procedures, and manuals, and July 1, 2008, for all other purposes.

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, in paragraph (b)(8),

deleted "gift cards," preceding "alcoholic beverages" and revised punctuation in subsections (d) and (e).

Editor's notes. — Ga. L. 2008, p. 776, § 4, not codified by the General Assembly, provides that this Code section shall apply to all transactions occurring on and after July 1, 2008.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting required for violators. — Offenses arising under O.C.G.A. § 50-5-83(c) are designated as offenses for

which those charged are to be fingerprinted. 2009 Op. Att'y Gen. No. 2009-1.

50-5-84. Contracting with companies having business operations in Sudan; scrutinized companies; certifications.

(a) As used in this Code section, the term:

(1) “Business operations” means engaging in commerce in any form in Sudan, including, but not limited to, acquiring, developing, maintaining, owning, selling, possessing, leasing, or operating equipment, facilities, personnel, products, services, personal property, real property, or any other apparatus of business or commerce.

(2) “Company” means any sole proprietorship, organization, association, corporation, partnership, joint venture, limited partnership, limited liability partnership, limited liability company, or other entity or business association, including all wholly owned subsidiaries, majority owned subsidiaries, parent companies, or affiliates of such entities or business associations, that exists for the purpose of making profit.

(3) “Government of Sudan” means the government in Khartoum, Sudan, that is led by the National Congress Party, formerly known as the National Islamic Front, or any successor government formed on or after October 13, 2006, including the coalition National Unity Government agreed upon in the Comprehensive Peace Agreement for Sudan, and does not include the regional government of southern Sudan.

(4) “Marginalized populations of Sudan” include, but are not limited to, the portion of the population in the Darfur region that has been genocidally victimized; the portion of the population of southern Sudan victimized by Sudan’s north-south civil war; the Beja, Rashidiya, and other similarly underserved groups of eastern Sudan; the Nubian and other similarly underserved groups in Sudan’s Abyei, southern Blue Nile, and Nuba Mountain regions; and the Amri, Hamadab, Manasir, and other similarly underserved groups of northern Sudan.

(5) “Military equipment” means weapons, arms, military supplies, and equipment that may readily be used for military purposes, including, but not limited to, radar systems, military-grade transport vehicles, or supplies or services sold or provided directly or indirectly to any force actively participating in armed conflict in Sudan.

(6) “Mineral-extraction activities” include the exploring, extracting, processing, transporting, or wholesale selling or trading of elemental minerals or associated metal alloys or oxides (ore), including gold, copper, chromium, chromite, diamonds, iron, iron ore, silver, tungsten, uranium, and zinc.

(7)(A) “Oil related activities” include:

(i) Exporting, extracting, producing, refining, processing, exploring for, transporting, selling, or trading oil; and

(ii) Constructing, maintaining, or operating a pipeline, refinery, or other oil field infrastructure.

(B) A company shall not be considered to be involved in oil related activities if:

(i) The company is involved in the retail sale of gasoline or related consumer products in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph; or

(ii) The company is involved in leasing or owns rights to an oil block in Sudan but is not involved in any other activity described in subparagraph (A) of this paragraph.

(8) "Power-production activities" means any business operations that involve a project commissioned by the National Electricity Corporation of Sudan or other similar entity of the government of Sudan whose purpose is to facilitate power generation and delivery, including establishing power-generating plants or hydroelectric dams, selling or installing components for the project, or providing service contracts related to the installation or maintenance of the project.

(9) "Scrutinized company" means a company that is conducting business operations in Sudan that is involved in power production activities, mineral extraction activities, oil-related activities, or the production of military equipment, but excludes a company that can demonstrate any of the following:

(A) Its business operations are conducted under contract directly and exclusively with the regional government of southern Sudan;

(B) Its business operations are conducted under a license from the Office of Foreign Assets Control or are expressly exempted under federal law from the requirement to be conducted under such a license;

(C) Its business operations consist of providing goods or services to marginalized populations of Sudan;

(D) Its business operations exclusively consist of providing goods or services to an internationally recognized peacekeeping force or humanitarian organization;

(E) Its business operations consist of providing goods or services that are used only to promote health or education;

(F) Its business operations with the Government of Sudan will be voluntarily suspended for the entire duration of the contract for goods or services for which they have bid on, or submitted a proposal for, a contract with a state agency; or

(G) It has adopted, publicized, and is implementing a formal plan to cease business operations within one year and to refrain from conducting any new business operations.

(b)(1) A scrutinized company shall be ineligible to, and shall not, bid on or submit a proposal for a contract with a state agency for goods or services.

(2) Notwithstanding paragraph (1) of this subsection, the Department of Administrative Services may permit a scrutinized company, on a case-by-case basis, to bid on or submit a proposal for a contract with a state agency for goods or services if it is in the best interests of the state to permit the scrutinized company to bid on or submit a proposal for one or more contracts with a state agency for goods or services.

(3) In making this determination, the Department of Administrative Services may utilize the following resources:

(A) Verification by an independent third party or nonprofit organization that a company is either:

(i) Undertaking significant humanitarian efforts in conjunction with an international organization, the Government of Sudan, the regional government of southern Sudan, or a nonprofit organization to benefit one or more marginalized populations of Sudan. The party or organization providing the verification or an independent third party shall evaluate and certify that the significant humanitarian efforts are substantial in relation to the company's Sudan business operations; or

(ii) Through engagement with the Government of Sudan, materially improving conditions for the genocidally victimized population in Darfur; and

(B) A National Interest Waiver issued by the President of the United States excluding a company from the federal contract prohibitions provisions of the Sudan Accountability and Divestment Act (Public Law 110-174).

(c)(1) A state agency shall require a company that submits a bid or proposal with respect to a contract for goods or services, that currently or within the previous three years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company.

(2) A state agency shall not require a company that submits a bid or proposal with respect to a contract for goods or services, and that currently or within the previous three years has had business activities or other operations outside of the United States, to certify that the company is not a scrutinized company, if the company has obtained permission to

bid on or submit a proposal for a contract with a state agency for goods or services pursuant to paragraph (2) of subsection (b) of this Code section.

(d)(1) Not later than August 1, 2009, the Department of Administrative Services shall file a written notice to the United States Attorney General detailing the requirements contained in this Code section, as required by the federal Sudan Accountability and Divestment Act of 2007 (P. L. No. 110-174).

(2) Annually thereafter, the Department of Administrative Services shall file a publicly available report to the General Assembly and the United States Attorney General outlining the actions taken under this Code section.

(3) The Department of Administrative Services shall report to the Attorney General of Georgia the names of companies determined to have submitted false certifications under subsection (c) of this Code section, together with information as to the false certification, and the Attorney General shall determine whether to bring a civil action against the companies. The companies shall pay all costs or fees incurred in a civil action, including those for investigations that led to the discovery of a false certification.

(e) If the Department of Administrative Services determines that a company has submitted a false certification under subsection (c) of this Code section:

(1) The company shall be liable for a civil penalty in an amount that is equal to the greater of \$250,000.00 or twice the amount of the contract for which a bid or proposal was submitted;

(2) The state agency or the Department of Administrative Services may terminate the contract with the company; and

(3) The company shall be ineligible to, and shall not, bid on a state contract for a period of not less than three years from the date the state agency determines that the company submitted the false certification.

The Department of Administrative Services shall report to the Attorney General the name of the company that the Department of Administrative Services determined had submitted a false certification under subsection (c) of this Code section, together with its information as to the false certification, and the Attorney General shall determine whether to bring a civil action against such company. If such company is found to have submitted a false certification, such company shall be ordered to pay all costs and fees incurred by the state in the civil action, including all costs incurred by the state agency and the Department of Administrative Services for investigations that led to the finding of the false certification and all costs and fees incurred by the Attorney General.

(f) The General Assembly shall periodically review this Code section and determine if any of the following events have occurred which should be construed and deemed to be a basis for repealing this Code section:

(1) The Congress or President of the United States declares the Darfur genocide has been halted for at least 12 months;

(2) The United States revokes all sanctions imposed against the Government of Sudan;

(3) The President of the United States has certified to Congress that the Government of Sudan has honored its commitments to do all of the following:

(A) Abide by United Nations Security Council Resolution 1769 (2007);

(B) Cease attacks on civilians;

(C) Demobilize and demilitarize the Janjaweed and associated militias;

(D) Grant free and unfettered access for delivery of humanitarian assistance; and

(E) Allow for the safe and voluntary return of refugees and internally displaced persons;

(4) The Congress or President of the United States, through legislation or executive order, declares the contract prohibition of the type provided for in this Code section interferes with the conduct of United States foreign policy; or

(5) Such other circumstances as the General Assembly determines to warrant the discontinuance of the provisions of this Code section. (Code 1981, § 50-5-84, enacted by Ga. L. 2009, p. 247, § 2/SB 170.)

Effective date. — This Code section became effective April 29, 2009.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, “, the company shall be subject to” was deleted from the end of the introductory language of subsection (e).

Editor’s notes. — Ga. L. 2009, p. 247, § 1, not codified by the General Assembly, provides that: “The General Assembly finds that:

“(1) Since 1993, the United States Secretary of State has determined Sudan is a country whose government has repeatedly provided support for acts of international terrorism, thereby restricting United States assistance, defense exports and sales, and

financial and other transactions with the Government of Sudan.

“(2) On September 21, 2004, in addressing the United Nations General Assembly, President George W. Bush affirmed the Secretary of State’s finding and stated, ‘At this hour, the world is witnessing terrible suffering and horrible crimes in the Darfur region of Sudan, crimes my government has concluded are genocide.’

“(3) The federal government has imposed sanctions against the Government of Sudan since 1997. These sanctions are monitored through the United States Treasury Department’s Office of Foreign Assets Control (OFAC).

“(4) On December 31, 2007, President

George W. Bush signed the Sudan Accountability and Divestment Act (Public Law 110-174). The legislation was passed by the Senate and the House of Representatives unanimously. That act authorizes state and local governments to adopt policies to divest from and prohibit contracts with problem-

atic companies operating in Sudan's oil, power, mineral, and military sectors. That act also prohibits the federal government from contracting with these companies."

Ga. L. 2009, p. 247, § 3, not codified by the General Assembly, provides for severability.

PART 2

LOCAL POLITICAL SUBDIVISION PURCHASES

50-5-100. Local political subdivision purchases through state authorized.

The Department of Administrative Services is authorized to permit local political subdivisions, on an optional basis, to purchase their supplies through the state. (Ga. L. 1968, p. 1352, § 1.)

Cross references. — Power of Department of Administrative Services to permit area planning and development commissions to

purchase services and supplies through state, § 50-8-41.

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary

equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

50-5-101. Notice to department; establishment of uniform standard specifications; report of annual requirements.

The governing authorities of each of the local political subdivisions in this state shall have the right, from time to time, to determine through study whether an overall substantial price advantage will result to a political subdivision by the means of a local political subdivision either alone or in conjunction with another political subdivision bidding through the Department of Administrative Services on standard items of equipment, supplies, or services or other standard expenses ordinarily needed, procured, or incurred by such governments without a sacrifice of safety or quality. If the governing authority of any political subdivision shall determine that such a price advantage may be obtained by such means on any one or more of such items or expenses, the governing authority or authorities shall make this fact known to the Department of Administrative Services. After receipt of such notice from the political subdivisions, the Department of Administrative Services shall, after consultation with the governing authorities, establish sets of uniform standard specifications for such item or items as may be reasonably required in order to meet the needs and requirements of the

requesting political subdivision. The governing authorities of the requesting political subdivision shall, at such times as the Department of Administrative Services shall prescribe, report its probable annual requirements for the standard items to the Department of Administrative Services and the requested time for delivery of the items. The Department of Administrative Services shall compile the requirements together with such other information as may be needed for the purpose of advertising for bids for a uniform state price on the items. (Ga. L. 1968, p. 1352, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary

equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

50-5-102. Competitive bidding procedure; bidder information; establishment of regulations and standards.

The Department of Administrative Services shall advertise for bids for supply of such items in the same manner followed for state purchases; provided, however, that the Department of Administrative Services shall inform prospective bidders that the bid requested is for the furnishing of the items to the designated political subdivisions at the times specified on the basis of a single state price applicable to all such local political subdivisions; that payment for the items as may be purchased by the political subdivisions shall be made by the respective political subdivision to the bidder; that no guarantee is made that any purchase will be made from the successful bidder as a result of such bid; and such other information as may be appropriate under the circumstances. The Department of Administrative Services shall, upon receipt of bids, process the same in the same manner followed for state purchases and promptly notify the governing authorities of the political subdivisions of the name of the successful bidder, the bid price, the terms of delivery guaranteed by the successful bidder, and any other pertinent information. The commissioner of administrative services shall prescribe regulations necessary for implementation and enforcement of this part and is authorized to establish minimum standards and uniform standard specifications and procedures for the purchase and distribution of equipment, supplies, services, and other expenses for the local political subdivisions of this state. (Ga. L. 1968, p. 1352, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Area planning and development commissions (now regional development centers) are authorized to use department to obtain

best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary

equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to

the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

RESEARCH REFERENCES

ALR. — Public contracts: authority of state or its subdivision to reject all bids, 52 ALR4th 186.

50-5-103. Purchase of motor vehicles, material, equipment, or supplies in name of state; procedure.

Notwithstanding any law to the contrary, the Department of Administrative Services, upon receiving a request to do so from a political subdivision, may purchase for the political subdivision in the name of the state any motor vehicle, material, equipment, or supplies desired by the political subdivision. The commissioner of administrative services is authorized to prescribe such rules, regulations, and procedures as he shall deem advisable concerning the purchase of motor vehicles, material, equipment, and supplies for the political subdivisions. However, no motor vehicle, material, equipment, or supplies shall be purchased in accordance with this Code section until the political subdivision shall place in the hands of the Department of Administrative Services a certified or cashier's check in an amount sufficient to cover the purchase price of the motor vehicle, material, equipment, or supplies. The Department of Administrative Services is authorized and empowered to execute the necessary documents to divest the state of all title in and to such motor vehicles, material, equipment, or supplies, and to vest in the political subdivision for whom the motor vehicle, material, equipment, or supplies were purchased all such rights in and title to the vehicles, material, equipment, or supplies. (Ga. L. 1969, p. 940, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Sheriff not political subdivision. — Sheriff cannot legally purchase vehicle through the state police car contract when the sheriff will personally have the title to the vehicle in sheriff's own name as opposed to that of the political subdivision for which the person is serving as a sheriff; the sheriff acting as an individual is not a political subdivision, and only political subdivisions are authorized by this section to purchase motor vehicles through the state. 1973 Op. Att'y Gen. No. 73-47.

Area planning and development commissions (now regional development centers)

are authorized to use department to obtain best prices and terms available in marketplace; an alternative is for local political subdivisions to purchase the necessary equipment, material, or supplies through the department and then appropriate or loan the material, equipment, or supplies to the area planning and development commissions in their area. 1970 Op. Att'y Gen. No. 70-202.

Cost of motor vehicle license plates is expense of Revenue Department. 1969 Op. Att'y Gen. No. 69-461.

PART 3

SMALL BUSINESS ASSISTANCE

50-5-120. Short title.

This part shall be known and may be cited as “The Small Business Assistance Act of 1975.” (Ga. L. 1975, p. 1619, § 1.)

50-5-121. Definitions.

For the purposes of this part, the term:

(1) “Department” means the Department of Administrative Services.

(2) “Small business” means a business which is independently owned and operated. In addition, such business must have either fewer than 100 employees or less than \$1 million in gross receipts per year. (Ga. L. 1975, p. 1619, § 3; Ga. L. 1982, p. 3, § 50.)

50-5-122. Legislative intent.

The legislative intent of this part is declared to be as follows: The most important element of the American economic system of private enterprise is free and vigorous competition. Only through the existence of free and vigorous competition can free entry into business and opportunities for personal initiative and individual achievement be assured. The preservation and expansion of such competition is essential for our economic well-being. In order to encourage such competition it is the declared policy of the state to ensure that a fair proportion of the total purchases and contracts or subcontracts for property, commodities, and services for the state be placed with small businesses so long as the commodities and services of small businesses are competitive as to price and quality. (Ga. L. 1975, p. 1619, § 2.)

50-5-123. Creation of advisory council; membership; meetings; chairman; executive director.

There is created an advisory council to the department to be composed of representatives of designated small business enterprises to be named as follows: five by the Governor, two each by the President of the Senate and the Speaker of the House of Representatives, and one by the commissioner of administrative services to serve ex officio as chairman of the council. The members of the council shall serve without compensation. The council shall meet at least once monthly, or more often when necessary, at the call of the chairman in consultation with the commissioner of administrative services or his designee who shall also serve without additional compensation as

executive director of the council. (Ga. L. 1975, p. 1619, § 4; Ga. L. 1982, p. 3, § 50.)

50-5-124. Reports required of advisory council.

The council shall make a written report to the Governor, the President of the Senate, the Speaker of the House of Representatives, and the chairmen of the Senate Committee on Insurance and Labor and the House Economic Development and Tourism Committee at least once each year, such report to be made no later than December 1. The report shall advise the Governor, the Speaker, the President, and the designated chairmen concerning progress toward achieving the legislative intent as set forth in Code Section 50-5-122 and shall contain such recommendations for legislation as the council herein provided for deems proper. (Ga. L. 1975, p. 1619, § 5; Ga. L. 1986, p. 10, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 2009, p. 303, § 16/HB 117.)

The 2009 amendment, effective April 30, 2009, substituted "House Economic Development and Tourism Committee" for "House Committee on Industry" in the first sentence. See the Editor's note for intent.

Editor's notes. — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: "This Act is intended to re-

flect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

PART 4

MINORITY BUSINESS ENTERPRISE DEVELOPMENT

50-5-130. Purpose.

The General Assembly recognizes that the preservation and expansion of the American economic system of private enterprise is through free competition, but it also recognizes that the security and well-being brought about by such competition cannot be realized unless the actual and potential capacity of minority business enterprises is encouraged and developed. Therefore, it is the intent of the General Assembly that the state define a "minority business enterprise" for purposes of representation in the area of procurement of state contracts for construction, services, equipment, and goods. (Code 1981, § 50-5-130, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-131. Definitions.

As used in this part, the term:

- (1) "Minority" means an individual who is a member of a race which comprises less than 50 percent of the total population of the state.

(2) "Minority business enterprise" means a small business concern which is owned and controlled by one or more minorities and is authorized to do and is doing business under the laws of this state, paying all taxes duly assessed, and domiciled within this state.

(3) "Owned and controlled" means a business:

(A) Which is at least 51 percent owned by one or more minorities or, in the case of a publicly owned business, at least 51 percent of all classes or types of the stock is owned by one or more minorities; and

(B) Whose management and daily business operations are controlled by one or more minorities. (Code 1981, § 50-5-131, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-132. Eligibility and procedures for certification; appeal of denial.

(a) Any minority business enterprise that desires to claim such status under any law of this state or any regulation promulgated pursuant thereto shall first apply for certification, in addition to any other certification required by the provisions of 49 C.F.R. 23, to the Department of Administrative Services.

(b) The Department of Administrative Services shall certify a business which meets the eligibility requirement of this part to qualify as a minority business enterprise. To qualify as a minority business enterprise, the business shall:

(1) Be a minority business enterprise;

(2) Submit any documentary evidence to support its status as a minority business enterprise;

(3) Sign an affidavit stating that it is a minority business enterprise;

(4) Be qualified to bid pursuant to the provisions of the Department of Administrative Services and other state agencies; and

(5) Present:

(A) An application, including the entire business history of the operation;

(B) Birth certificates for all minority principals;

(C) If Native American, a tribal registration card or certificate;

(D) Current resumes on all principals, key managers, and other key personnel;

(E) A current financial statement;

(F) Proof of investment by principals;

(G) Loan agreements;

(H) Lease or rental agreement for space and equipment;

(I) Evidence of latest bond;

(J) If the applicant is a sole proprietor, a copy of a blank signature card;

(K) If the applicant is a partnership, a copy of the partnership agreement; and

(L) If the applicant is a corporation, articles of organization, corporation bylaws, copies of all stock certificates, minutes of the first corporate organizational meeting, bank resolution on all company accounts, and a copy of the latest United States corporate tax return.

(c) The Department of Administrative Services shall prepare and maintain a list of certified minority business enterprises.

(d) The Department of Administrative Services may deny certification to any minority business enterprise which does not qualify as such under the provisions of this part. Any person adversely affected by an order of the Department of Administrative Services denying certification as a minority business enterprise may appeal as provided in the regulations of the Department of Administrative Services. (Code 1981, § 50-5-132, enacted by Ga. L. 1991, p. 1380, § 3.)

50-5-133. Fraud in certification process; penalty; effect of multiple violations.

(a) It shall be unlawful for a person to:

(1) Knowingly and with intent to defraud, fraudulently obtain, retain, attempt to obtain or retain, or aid another in fraudulently obtaining or retaining or attempting to obtain or retain, certification as a minority business enterprise for the purposes of this part;

(2) Knowingly and willfully make a false statement with the intent to defraud, whether by affidavit, report, or other representation, to a state official or employee for the purpose of influencing the certification or denial of any certification of any entity as a minority business enterprise;

(3) Knowingly and willfully obstruct, impede, or attempt to obstruct or impede any state official or employee who is investigating the qualifications of a business entity which has requested certification as a minority business enterprise;

(4) Knowingly and willfully with intent to defraud, fraudulently obtain, attempt to obtain, or aid another person in fraudulently obtaining or attempting to obtain, public moneys to which the person is not entitled under this part; or

(5) Knowingly and willfully assign any contract awarded pursuant to the Department of Administrative Services to any other business enterprise without prior written approval of the Department of Administrative Services.

(b) Any person convicted of violating any provision of this Code section shall be guilty of a felony, punishable by imprisonment for not more than five years or a fine of not more than \$10,000.00 or both such imprisonment and fine.

(c) If a contractor, subcontractor, supplier, subsidiary, principal, or affiliate thereof has been found to have violated this Code section and that violation occurred within three years of another violation of this Code section, the Department of Administrative Services shall prohibit that contractor, subcontractor, supplier, subsidiary, or affiliate thereof from entering into a state project or state contract; from further bidding to a state entity; from being a subcontractor to a contractor for a state entity; and from being a supplier to a state entity. (Code 1981, § 50-5-133, enacted by Ga. L. 1991, p. 1380, § 3.)

PART 5

STATE USE COUNCIL

50-5-135. Creation of State Use Council; membership; terms; appointments; compensation; existence.

(a) There is created the State Use Council, hereafter referred to as the council. The council shall be composed of 15 members as follows:

(1) The commissioner of administrative services or his or her designee;

(2) The commissioner of human services or his or her designee;

(3) The commissioner of community affairs or his or her designee;

(4) The commissioner of corrections or his or her designee;

(5) Five members appointed by the Governor who shall represent the business community of the state;

(6) Three members appointed by the Governor who shall represent a broad spectrum of persons with disabilities; and

(7) Three members appointed by the Governor who shall represent the interest of organizations representative of persons with disabilities.

(b) Initially, the nine members appointed pursuant to paragraphs (5) through (7) in subsection (a) of this Code section shall serve staggered terms of office as follows: three members for two years, three members for

three years, and three members for four years. Thereafter, each member shall serve for a term of four years. Such members shall serve until the appointment and qualification of their successors. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state.

(c) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The council shall elect its own officers. No vacancy on the council shall impair the right of the quorum to exercise all rights and perform all duties of the council.

(d) The members of the council shall receive no compensation for their services but shall be entitled to and shall be reimbursed for their actual expenses, including travel and any other expenses incurred in the performance of their duties. Reimbursement for travel by a personal motor vehicle shall be made in the same manner and subject to the same limitations as provided for state employees under Code Section 50-19-7.

(e) The council shall have perpetual existence. Any change in name or composition of the council shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part. (Code 1981, § 50-5-135, enacted by Ga. L. 1993, p. 1736, § 2; Ga. L. 2009, p. 453, § 2-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted “commissioner of human services” for “commissioner of human resources” in paragraph (a)(2).

50-5-136. Powers and authority of council.

(a) The State Use Council shall have the authority authorized in this part concerning the procurement of certain services provided and goods, wares, and merchandise produced by community based rehabilitation programs and training centers and purchased by the Department of Administrative Services. All services provided or goods, wares, or merchandise produced wholly or in part by the community based rehabilitation programs and training centers operated by or under contract with the Department of Human Services and needed by the departments, institutions, and agencies of the state and its political subdivisions supported wholly or in part by public funds shall be obtained from community based rehabilitation programs and training centers where availability of such services, goods, wares, or merchandise has been certified in writing by the council.

(b) The State Use Council shall have the following powers and authority:

(1) To designate a central nonprofit agency to represent community based rehabilitation programs and training centers in the state and to facilitate the distribution of orders of the State of Georgia for goods,

wares, merchandise, and services on the procurement list among certified community based rehabilitation programs and training centers. As used in this part, the term "central nonprofit agency" means an agency organized under the laws of Georgia and operated in the interest of persons with disabilities in Georgia, the net income of which does not inure in whole or in part to the benefit of any shareholder or individual. The central nonprofit agency shall be selected using criteria established by the council and shall be selected for a period not to exceed two years, provided that an agency may succeed itself as the central nonprofit agency. The central nonprofit agency will be responsible for selecting the community based rehabilitation program and training center to perform a specific contract for work ordered by the state. Consideration will be given to the strengths of the particular organization, prior work history, and the ability to produce within time and budgetary parameters. Only programs and centers which have been certified by the council will be eligible for state use contracts. Once the community based rehabilitation program and training center has been selected and a subcontract has been established between that community based rehabilitation program and training center and the central nonprofit agency, the central nonprofit agency shall provide management and quality control assistance in the administration of the project. This may be in the form of quality assurance procedures, time and date deadlines, technical assistance in assembly, or a variety of other activities concerning the project at hand. Other than on a specific contract basis, the central nonprofit agency will offer training programs, certification workshops, quality control workshops, and other technical, management, marketing, and general assistance programs to participating programs and centers in the state. These programs may not be mandatory in all cases, however, they will be offered to help the various programs and centers become more productive and efficient in their handling of state use contracts and other work as well. The central nonprofit agency shall maintain the necessary records and data concerning contracts with certified community based rehabilitation programs and training centers and shall maintain communication with community based rehabilitation programs and training centers during the conduct of a contract which has been let with the program and center for various program services as necessary and appropriate;

(2) To develop, in conjunction with the Department of Administrative Services, a list of goods, wares, merchandise, and services which shall be set aside for purchase from community based rehabilitation programs and training centers. This list shall be reviewed annually and goods, wares, merchandise, and services may be added or deleted as necessary and appropriate;

(3) To establish fair market prices for commodities or services on the selected procurement list and to consider recommendations from the

procuring agencies, the central nonprofit agency, and other relevant sources. The central nonprofit agency shall analyze the data and submit a recommended fair market price to the council along with detailed justification necessary to support the recommended prices. Pricing guidelines shall be established by the council in association with standard methodology for determining fair market value. However, the fair market prices shall not exceed the prices normally paid by state agencies for such commodities or services;

(4) To oversee and assist in the development of guidelines for the certification of community based rehabilitation programs and training centers in the State of Georgia. The intent of these guidelines shall be to evaluate the qualifications and capabilities of community based rehabilitation programs and training centers interested in certification; to determine criteria for quality, efficiency, timeliness, and cost effectiveness in the production of goods, wares, merchandise, and services to be procured under the state use plan and purchased by the State of Georgia; and to establish a certification process which shall enable community based rehabilitation programs and training centers qualified under this process to compete in procurement activities provided for by this part. All community based rehabilitation programs and training centers which are certified by the commissioner of human resources (now known as the commissioner of human services for these purposes) as of February 8, 1994, shall not have to undergo the certification evaluation and approval process until 24 months from February 8, 1994;

(5) With respect to the certification process and the designated community based rehabilitation programs and training centers which may enter into contracts under this part, to establish criteria for determining what constitutes a substantial disability to employment that prevents the individual under the disability from currently engaging in normal competitive employment. In establishing the criteria, the council shall consult with appropriate entities of government and take into account the views of nongovernmental entities representing the severely disabled. The council shall give weight to the criteria established by the federal committee for purchase of products and services of the blind and other severely disabled persons, pursuant to the federal Wagner-O'Day Act (41 U.S.C. Sections 46-48b), as amended; and

(6) To make an annual report to the Governor and the General Assembly concerning its activities under this part and the activities and contracts provided by the central nonprofit agency. The State Use Council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 50-5-136, enacted by Ga. L. 1993, p. 1736, § 2; Ga. L. 1995, p. 1302, §§ 13, 14; Ga. L. 2005, p. 1036, § 43/SB 49; Ga. L. 2009, p. 453, §§ 2-2, 2-27/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" in the last sentence of subsection (a) and inserted "(now known as the commissioner of human services for these purposes)" in the last sentence of paragraph (b)(4).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "as of February 8, 1994," and "February 8, 1994" were substituted for "at the time of the effective date of this part" and "said effective date", respectively, in the last sentence in paragraph (b)(4).

OPINIONS OF THE ATTORNEY GENERAL

Product or service as mandatory source. — Goods and services placed jointly on the set aside list by the Commissioner of Administrative Services and the State Use Council and purchased by the Department of Administrative Services are mandatory sources for the state, subject to the further provisions of the State Use Law. 2007 Op. Att'y Gen. No. 2007-6.

Price determination. — Determination of the "price normally paid by state agencies" is within the purview of the Commissioner of Administrative Services, in that he has the general oversight of state purchasing and he is empowered to cancel or modify a contract under State Use Law for "noncompetitive pricing reasons." 2007 Op. Att'y Gen. No. 2007-6.

Service and pricing specifications. — Specifications and parameters for particular

goods and services recommended by agencies should be considered by the State Use Council in certifying availability under O.C.G.A. § 50-5-136(a) and by the Commissioner of Administrative Services and Council in creating the set aside list under O.C.G.A. § 50-5-136(b)(2). 2007 Op. Att'y Gen. No. 2007-6.

Time limit to contracts. — There is no statutory time limit to contracts made under the state use program; however, the Commissioner of Administrative Services and the State Use Council "annually" review the goods and services to be placed on the set aside list, and the contracts are subject to cancellation or modification at any time by the Commissioner for reasons of nonperformance or noncompetitive price. 2007 Op. Att'y Gen. No. 2007-6.

50-5-137. Participation of certified community based rehabilitation programs.

Notwithstanding any other provisions of law to the contrary, certified community based rehabilitation programs and training centers conducting contract work under the state use plan and under the auspices of the central nonprofit agency shall not be required to have prior experience in providing the goods, wares, merchandise, or services in a given contract in order to participate in these contracts. (Code 1981, § 50-5-137, enacted by Ga. L. 1993, p. 1736, § 2.)

50-5-138. Procurement of contracts with central nonprofit agencies; fees; cancellation or modification; existing contracts grandfathered.

(a) The Department of Administrative Services shall contract with the central nonprofit agency to pay a fee to such agency on the basis of contracts procured from the state. This fee shall be not less than 5 percent nor more than 8 percent of the total contract fee awarded for a particular project. The fees will be added to the fair market price paid by the state agencies and political subdivisions or will be paid from assessments received

from the state agencies and political subdivisions by the Department of Administrative Services. The timeliness and methodology of collection of these fees will be decided upon between the Department of Administrative Services and the central nonprofit agency and shall be incorporated into such contract.

(b) The commissioner of administrative services retains the right to cancel or modify contracts which have been selected for procurement under this part for nonperformance and noncompetitive pricing reasons.

(c) All contracts which presently exist between the State of Georgia and community based rehabilitation programs and training centers in Georgia, including the State of Georgia administered Georgia Industries for the Blind, shall be grandfathered in perpetuity, excepting for nonperformance reasons according to the policies, regulations, and determination of the Department of Administrative Services. (Code 1981, § 50-5-138, enacted by Ga. L. 1993, p. 1736, § 2.)

OPINIONS OF THE ATTORNEY GENERAL

Cancellation of contracts. — Under O.C.G.A. § 50-5-138(b), the Commissioner of Administrative Services is empowered to cancel or modify contracts when either nonperformance or noncompetitive pricing is present. 2007 Op. Att'y Gen. No. 2007-6.

Establishment of source and fee. — The Commissioner of Administrative Services

and the central nonprofit agency must contract with one another in order to establish the mandatory source and to establish the amount, timing, and method of the statutory fee to be paid to the central nonprofit agency by state agencies, within statutory parameters. 2007 Op. Att'y Gen. No. 2007-6.

ARTICLE 4

DISPOSITION OF SURPLUS PROPERTY

50-5-140. Department to request lists of surplus property.

It shall be the duty and responsibility of the head of each department, institution, or agency of the state to furnish, upon written request by the Department of Administrative Services on such forms as provided by it, a list of all surplus personal property held by that department, institution, or agency at the time of the request. These requests may be made by the Department of Administrative Services as often as it deems necessary. (Ga. L. 1968, p. 1148, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Disposal of surplus airplane. — An airplane that has been declared surplus property may be disposed of in accordance with Ga. L. 1964, p. 1148, §§ 1 and 5 (see

O.C.G.A. §§ 50-5-140 and 50-5-145). 1970 Op. Att'y Gen. No. 70-67.

Disposal of airplane received as gift. — An airplane received by the University of

Georgia as a gift, that has never been used, and is not required for the conduct of business of the university, need not be transferred to the Department of Transportation for disposal. 1970 Op. Att'y Gen. No. 70-67.

Disposal of surplus property by Legislative Services Committee. — There is likely

no legal impediment to the Legislative Services Committee transferring the surplus property in the committee's custody to the custody of the Department of Administrative Services (DOAS) for disposition pursuant to the DOAS authority. 1994 Op. Att'y Gen. No. U94-3.

50-5-141. Transfer, sale, trade, or destruction authorized; prohibition of certain employee purchases.

(a) The Department of Administrative Services is authorized and it shall be its duty to dispose of surplus property by one of the following means:

(1) Transfer to other state agencies;

(2) Sell to the highest responsible bidder for cash;

(3) Sell by fixed price; provided, however, that surplus property sold by fixed price shall have been originally purchased by the state for an amount of \$5,000.00 or less;

(4) Trade in such surplus property on the purchase of new equipment if the Department of Administrative Services shall determine that such action is for the best interest of the state; or

(5) Where the Department of Administrative Services shall determine that the surplus property has no value or that the cost of maintaining and selling the surplus property exceeds the anticipated proceeds from the sale of the surplus property, by destruction and disposal and order of removal from the inventory of the department, institution, or agency with such action noted thereon.

(b) No employee of the Department of Administrative Services or such employee's immediate family member shall purchase surplus property sold by fixed price or negotiated sale; nor shall any person purchase surplus property by fixed price or negotiated sale for the direct or indirect benefit of any such employee or employee's immediate family member. (Ga. L. 1968, p. 1148, § 2; Ga. L. 2006, p. 340, § 1/SB 592; Ga. L. 2007, p. 47, § 50/SB 103.)

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, substituted "proceeds

from the sale" for "proceeds from the sell" in the middle of paragraph (a)(5).

50-5-142. Commissioner to promulgate rules and regulations.

The commissioner of administrative services shall promulgate such rules and regulations as may be required to carry out Code Sections 50-5-140, 50-5-141, 50-5-143, 50-5-144, and 50-5-146 and shall establish procedures for the disposition of surplus property, including the manner whereby the sale

of surplus property shall be advertised and competitive bids for the purchase thereof shall be secured. (Ga. L. 1968, p. 1148, § 3; Ga. L. 1972, p. 838, § 2; Ga. L. 1984, p. 903, § 1; Ga. L. 2006, p. 340, § 2/SB 592.)

OPINIONS OF THE ATTORNEY GENERAL

Rules and regulations must be within limitations. — Although both the Office of Planning and Budget and the Department of Administrative Services have the authority to promulgate rules and regulations, they can

only do so via the narrowly defined limitations imposed by the General Assembly, for to do otherwise would be an improper delegation of legislative authority. 1972 Op. Att’y Gen. No. 72-73.

50-5-143. Transfer to political subdivision by negotiated sale; conditions.

(a) As used in this Code section, the term “political subdivision” means any county or municipality of this state or any county or independent board of education of this state.

(b) In addition to the authority provided in Code Section 50-5-141, the Department of Administrative Services shall be further authorized to dispose of surplus property by the transfer of the property to any political subdivision through a negotiated sale if the Department of Administrative Services determines that such sale would be in the best interests of the state, and, under the circumstances, the negotiated sales price would constitute a reasonable consideration for the property.

(c) When any surplus property is transferred to a political subdivision, pursuant to subsection (b) of this Code section, such transfer shall be subject to the following conditions:

(1) The property shall not be resold by any such political subdivision within one year after the transfer without the written consent of the Department of Administrative Services; and

(2) The Department of Administrative Services shall have the right, which shall be exercised at its discretion, to supervise the resale of the property at public outcry to the highest responsible bidder if the resale of the property is within one year after such transfer. (Ga. L. 1972, p. 838, § 1; Ga. L. 1982, p. 3, § 50.)

50-5-144. Transfer to charitable institutions or public corporations by negotiated sale; conditions.

(a) As used in this Code section, the term:

(1) “Charitable institution” means any nonprofit tax-exempt person, firm, or corporation providing services within this state.

(2) “Public corporation” means any public authority or other public corporation created by or pursuant to state law.

(b) In addition to any other authority provided by Code Sections 50-5-140 through 50-5-143, this Code section, and Code Section 50-5-146, the Department of Administrative Services shall be authorized to dispose of surplus property, including surplus property subject to paragraph (7) of Code Section 50-5-51, by the transfer of the property to any charitable institution or public corporation through a negotiated sale if the department determines that such sale would be in the best interests of the state, and, under the circumstances, the negotiated sales price would constitute a reasonable consideration for the property.

(c) When any surplus property is sold to a charitable institution or to a public corporation pursuant to subsection (b) of this Code section, the sale shall be subject to the following conditions:

(1) The property shall not be resold by the purchaser within one year after the sale without the written consent of the Department of Administrative Services; and

(2) The Department of Administrative Services shall have the right and obligation to supervise the resale of the property at public outcry to the highest responsible bidder if the resale is within one year after the sale and, if the resale price exceeds the original negotiated sales price, the amount of the excess shall be paid to the Department of Administrative Services. (Ga. L. 1979, p. 1071, § 1; Ga. L. 2006, p. 340, § 3/SB 592.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “Code Section” was inserted preceding “50-5-146” in subsection (b).

50-5-145. Limited application of provisions.

Nothing contained within Code Sections 50-5-140 through 50-5-144 and 50-5-146 shall be construed so as to apply to any real property owned by the state, and such Code sections shall not apply to such property, nor shall such Code sections be construed so as to prohibit the Attorney General from distributing or selling the published reports of the opinions of the Attorney General. (Ga. L. 1968, p. 1148, § 5; Ga. L. 1972, p. 838, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Disposal of surplus airplane. — An airplane that has been declared surplus property may be disposed of in accordance with Ga. L. 1968, p. 1148, §§ 1 and 5 (see O.C.G.A. §§ 50-5-140 and 50-5-145). 1970 Op. Att’y Gen. No. 70-67.

Disposal of airplane received as gift. — An airplane received by the University of

Georgia as a gift, that has never been used, and is not required for the conduct of business of the university, need not be transferred to the Department of Transportation for disposal. 1970 Op. Att’y Gen. No. 70-67.

50-5-146. Penalty.

Any person who causes state property having a value of less than \$200.00 to be disposed of in violation of this article shall be guilty of a misdemeanor. If such property has a value of \$200.00 or more, he or she shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than five years. (Ga. L. 1968, p. 1148, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 2006, p. 340, § 4/SB 592.)

ARTICLE 5**COMMUNICATION SERVICES****50-5-160 through 50-5-202.**

Repealed by Ga. L. 2008, p. 1015, § 10, effective May 14, 2008.

Editor's notes. — This article consisted of Code Sections 50-5-160 through 50-5-169 (Part 1), Code Sections 50-5-180 through 50-5-186 (Part 2), and Code Sections 50-5-190 through 50-5-202 (Part 3), relating to communications services, and was based on Ga. L. 1969, p. 616; Ga. L. 1973, p. 1261, §§ 1-9; Ga. L. 1975, p. 1642, §§ 1-7; Ga. L. 1991, p. 389, § 1; Ga. L. 1992, p. 480, § 1; Ga. L. 1992, p. 1441, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 1994, p. 2010, § 1; Ga. L. 1995, p. 1302, § 15; Ga. L. 2000, p. 249, §§ 4-6; Ga. L. 2003, p. 354, § 1; Ga. L. 2005, p. 694, § 2/HB 293; Ga. L. 2005, p. 1036, § 44/SB 49.

CHAPTER 5A

OFFICE OF TREASURY AND FISCAL SERVICES

Sec.		Sec.	
50-5A-1.	Office of Treasury and Fiscal Services created; director appointed.	50-5A-7.	Duties of Office of Treasury and Fiscal Services generally; investments through director.
50-5A-2.	Director required to give bond; conditions.	50-5A-8.	State government expenses to be paid by Governor's warrant drawn on appropriations.
50-5A-3.	Property of director liable for faithful performance; lien in favor of state.	50-5A-9.	Assignment to Department of Administrative Services for administrative purposes.
50-5A-4.	Bond to be recorded and filed; certified copy admissible in evidence.	50-5A-10.	Transfer of powers and duties from former Fiscal Division; Georgia State Financing and Investment Commission; director of Office of Treasury and Fiscal Services.
50-5A-5.	Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.	50-5A-11.	Records not constituting public records.
50-5A-6.	Execution instantaner against director when liable to state.		

50-5A-1. Office of Treasury and Fiscal Services created; director appointed.

There is created the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall be both appointed and removed by the State Depository Board and shall be in the unclassified service. The director shall hire the personnel for the office and shall supervise, direct, account for, organize, plan, and execute the functions vested in the office. Any reference in this chapter to the "director" shall mean the director of the Office of Treasury and Fiscal Services. (Ga. L. 1972, p. 1015, § 408A; Code 1981, § 50-5-2; Code 1981, § 50-5A-1, as redesignated by Ga. L. 1993, p. 1402, § 2.)

JUDICIAL DECISIONS

Cited in *Carter v. Burson*, 230 Ga. 511, 198 S.E.2d 151 (1973).

50-5A-2. Director required to give bond; conditions.

The director shall post bond to the state in the sum of \$200,000.00, with a bonding company duly licensed to do business in the state and approved by the Governor, the annual premium of the bond to be paid from funds appropriated to the Office of Treasury and Fiscal Services. The bond shall be conditioned as follows:

(1) That the director faithfully discharge, execute, and perform all and singular the duties required of him or her by virtue of the office and the Constitution and laws of this state;

(2) That the director faithfully account for and pay over all state moneys received by him or her from time to time by virtue of the office; and

(3) That the director safely deliver to his or her successor all records, moneys, vouchers, accounts, and effects whatsoever belonging to the office. (Orig. Code 1863, § 87; Code 1868, § 84; Code 1873, § 90; Ga. L. 1876, p. 126, §§ 2, 4; Code 1882, §§ 90, 91b; Civil Code 1895, §§ 188, 190; Civil Code 1910, §§ 217, 219; Ga. L. 1919, p. 383, § 3; Code 1933, § 40-1001; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-3; Ga. L. 1982, p. 843, § 1; Code 1981, § 50-5A-2, as redesignated by Ga. L. 1993, p. 1402, § 2.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

JUDICIAL DECISIONS

Insufficiency of unsigned bond. — A bond unsigned by the treasurer (now director of the Office of Treasury and Fiscal Services) did not meet the requirements of this section. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 130 et seq.

50-5A-3. Property of director liable for faithful performance; lien in favor of state.

The surety may, by express stipulation in writing, limit its liability to a specific sum to be stated in the bond of the director, and all the property of the director to the full amount of the bond and the property of the securities to the amount for which they may be severally bound shall be liable for the faithful performance by the director of the duties of the office from the date of the execution of the bond. A lien is created in favor of the state upon the property of the director to the amount of the bond and upon the property of the securities upon the bond to the amount for which they may be severally liable, from the date of the execution of the bond. (Ga. L. 1876, p. 126, § 3; Code 1882, § 91a; Civil Code 1895, § 189; Civil Code 1910, § 218; Code 1933, § 40-1002; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-4; Code 1981, § 50-5A-3, as redesignated by Ga. L. 1993, p. 1402, § 2.)

JUDICIAL DECISIONS

Invalid bond due to lack of affidavit. — Since there was no affidavit of the sureties as to what the sureties were worth attached to the bond, there cannot be a statutory bond in accordance with this section. *Mayo v. Renfro*, 66 Ga. 408 (1881).

Enforcement of bond. — The bond of a state depository is enforced in the same manner as the treasurer's (now director's) bond under this section. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

State acquires lien for amount of executed bond. — Under former Code 1910, §§ 218 and 1252 (see O.C.G.A. §§ 50-5A-3 and 50-17-58), from the date of the execution of the bond of a state depository, the state has a lien on its property for the amount thereof, and the lien of the state is not limited to such property of the depository as may be reached by levy and sale but extends

to all the property, including choses in action. *Standard Accident Ins. Co. v. Luther Williams Bank & Trust Co.*, 45 Ga. App. 831, 166 S.E. 260 (1932), *rev'd on other grounds*, *Gormley v. Troup County*, 178 Ga. 446, 173 S.E. 672 (1934).

Lien covers all assets of depository. — Under former Code 1910, §§ 218, 1252 and 1256 (see O.C.G.A. §§ 50-5A-3, 50-17-58, and 50-17-59), the state acquires a lien on all the assets of a depository bank, both those at the time of the execution of the bond and those subsequently acquired. *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Cited in *Fidelity & Deposit Co. v. Howard*, 67 F.2d 961 (5th Cir. 1933); *Gormley v. Board of Comm'rs of Rds. & Revenues*, 178 Ga. 439, 173 S.E. 667 (1934).

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 196, 197, 358, 370. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25, 121 et seq. 81A C.J.S., States, §§ 235, 236.

50-5A-4. Bond to be recorded and filed; certified copy admissible in evidence.

The bond of the director, when duly executed and approved, shall be recorded in the Secretary of State's office and filed in the office of the Governor. A copy of the bond, when certified by one of the Governor's secretaries under the seal of the office of the Governor, or a certified copy taken from the records of the Secretary of State's office shall be received in evidence in any court in lieu of the original. (Ga. L. 1876, p. 126, § 5; Code 1882, § 91c; Civil Code 1895, § 191; Civil Code 1910, § 220; Code 1933, § 40-1003; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-5; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-4, as redesignated by Ga. L. 1993, p. 1402, § 2.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 134.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 88 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, § 235, 236.

50-5A-5. Renewal of bond when insufficient; vacancy in office upon refusal to renew bond; appointment to fill vacancy.

The Governor, at all times when, in the Governor's opinion, the security or securities of the director have or are likely to become invalid or insufficient, shall demand and require the director forthwith to renew the bond to the state, in the amount and according to the form prescribed in Code Sections 50-5A-2 through 50-5A-4, and in case of neglect or refusal by any director to give bond, with security or securities, within ten days after the same is demanded and required by the Governor, such neglect or refusal shall be a disqualification under the law and shall create a vacancy in the office of the director. The State Depository Board shall forthwith appoint a fit and proper person to fill the vacancy occasioned thereby; and the appointee shall give bond and security in the same manner and upon the same terms as prescribed for the director. (Ga. L. 1876, p. 126, § 6; Code 1882, § 91d; Civil Code 1895, § 192; Civil Code 1910, § 221; Code 1933, § 40-1004; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-6; Ga. L. 1982, p. 3, § 50; Code 1981, § 50-5A-5, as redesignated by Ga. L. 1993, p. 1402, § 2.)

RESEARCH REFERENCES

<p>Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 351 et seq.</p> <p>C.J.S. — 67 C.J.S., Officers and Public</p>	<p>Employees, § 61. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, § 235, 236.</p>
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50-5A-6. Execution instanter against director when liable to state.

If the director fails to perform the duties of the office, misapplies or misuses the funds of the state, or fails to account for and pay over any moneys that he or she may have received by virtue of the office, whereby the director becomes liable to the state, it shall not be necessary to bring an action on the official bond; but the Governor may issue an execution instanter against the director and the securities for the amount due the state by the director, with penalties and costs. The execution shall be directed to all and singular sheriffs of this state and shall be executed by them. The director and securities shall have only those defenses allowed tax collectors against executions issued against them by the state revenue commissioner. (Ga. L. 1876, p. 126, § 14; Code 1882, § 97b; Civil Code 1895, § 195; Civil Code 1910, § 224; Code 1933, § 40-1005; Ga. L. 1972, p. 1015, §§ 408, 408B, 2102, 2104; Code 1981, § 50-5-7; Code 1981, § 50-5A-6, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 1994, p. 97, § 50.)

JUDICIAL DECISIONS

<p>Words “those defenses” does not apply to an appeal to the Governor but to those</p>	<p>allowed to tax collectors and taxpayers under the prohibition of judicial interference;</p>
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for example: (1) an unconstitutional exaction; (2) where the law does not impose or authorize the tax; and (3) where the defendants do not occupy the official positions alleged. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Enforcement of bond. — The bond of a state depository is enforced in the same manner as the treasurer's (now director's) bond under this section. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

Summary remedy not applicable to O.C.G.A. § 45-4-20. — The summary remedy of Ga. L. 1876, p. 126, § 14 (see O.C.G.A. § 50-5A-6) was not in the contem-

plation of the legislature when they enacted former Code 1873, § 167 (see O.C.G.A. § 45-4-20) declaring what bonds valid though not in conformity with the law. Consequently, this remedy has no application to former Code 1873, § 167. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Resolution of General Assembly fixing director's amount of liability is unconstitutional. *Mayo v. Renfroe*, 66 Ga. 408 (1881).

Cited in *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 351 et seq. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 63.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 355. 73 C.J.S., Public Administrative Law and Procedure, § 24, 25. 81A C.J.S., States, § 235, 236.

50-5A-7. Duties of Office of Treasury and Fiscal Services generally; investments through director.

(a) It shall be the power and duty of the Office of Treasury and Fiscal Services:

(1) To receive and keep safely all moneys which shall from time to time be paid to the treasury of this state, and to pay all warrants legally drawn on the treasury by the Governor and countersigned by the Comptroller General or, in the Comptroller General's absence, by the deputy comptroller general, and to pay all drafts of the President of the Senate and the Speaker of the House of Representatives for sums lawfully due the members and officers of their respective bodies;

(2) To keep good and sufficient accounting records of every sum of money received into, or disbursed from, the state treasury, utilizing an accounting system in conformity with generally accepted accounting principles and approved by the state accounting officer;

(3) To keep a true and faithful record of all warrants drawn by the Governor on the treasury and all drafts drawn on the treasury by the President of the Senate and the Speaker of the House of Representatives;

(4) To keep a true and faithful record of the accounts with all designated state depositories in which the state's money is deposited, showing the principal amount and the interest earned in each depository;

(5) To keep safely certificates of stock, securities, state bonds, and other evidences of debt and to manage and control the same for the purposes to which they are pledged;

(6) To invest all state and custodial funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(7) To invest all health insurance funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(8) To invest all self-insurance, liability, indemnification, tort claims, workers' compensation, or related funds, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title;

(9) To invest all other funds in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title; and

(10) To lend securities in its possession, subject to the limitations of subsection (b) of this Code section and Chapter 17 of this title.

(b) Pursuant to an investment policy adopted by the State Depository Board, the Office of Treasury and Fiscal Services shall invest funds through the director. The director shall invest all funds with the degree of judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering first the probable safety of their capital and then the probable income to be derived. (Laws 1799, Cobb's 1851 Digest, p. 1022; Laws 1839, Cobb's 1851 Digest, p. 1031; Laws 1843, Cobb's 1851 Digest, p. 1033; Laws 1845, Cobb's 1851 Digest, p. 1035; Ga. L. 1853-54, p. 9, § 10; Ga. L. 1859, p. 67, §§ 2, 3; Code 1863, §§ 89, 105; Code 1868, §§ 86, 103; Ga. L. 1869, p. 12, § 1; Code 1873, §§ 92, 111; Ga. L. 1876, p. 126, §§ 12, 13; Ga. L. 1878-79, p. 88, §§ 2, 4, 5; Code 1882, §§ 97, 111; Civil Code 1895, §§ 199, 218; Civil Code 1910, §§ 228, 252; Code 1933, § 40-1101; Ga. L. 1956, p. 802, § 1; Ga. L. 1972, p. 1015, §§ 408B, 2104; Code 1981, § 50-5-8; Ga. L. 1982, p. 843, § 2; Ga. L. 1992, p. 6, § 50; Code 1981, § 50-5A-7, as redesignated by Ga. L. 1993, p. 1402, § 2; Ga. L. 2000, p. 1474, § 1; Ga. L. 2004, p. 319, § 1; Ga. L. 2005, p. 694, § 3/HB 293.)

Cross references. — Powers and duties of Office of Treasury and Fiscal Services regarding local government investment pool, Ch. 83, T. 36. Payment to Office of Treasury

and Fiscal Services of taxes, penalties, interest, and other moneys collected pursuant to revenue and licensing laws, § 48-2-17.

JUDICIAL DECISIONS

Use of interest on state funds. — So much of the opinion in *Renfroe v. Colquitt*, 74 Ga. 618 (1885), which states that the treasurer's (now director's) earning of interest on state money was not receiving money by virtue of treasurer's office was obiter as being entirely unnecessary to the opinion in that case. *Puckett v. Chambers*, 66 Ga. App. 513, 18

S.E.2d 20 (1941), aff'd sub nom. *Puckett v. Walker*, 194 Ga. 401, 21 S.E.2d 713 (1942).

O.C.G.A. § 50-5A-7 as exclusive remedy.

— This section provided an exclusive remedy when enacted, and where a statute creates a new offense and announces the penalty, or gives a new right and declares the remedy, the punishment or the remedy can

be only that which the statute prescribes. *Puckett v. Chambers*, 66 Ga. App. 513, 18 S.E.2d 20 (1941), *aff'd sub nom. Puckett v. Walker*, 194 Ga. 401, 21 S.E.2d 713 (1942).

Warrants properly executed and presented paid. — The state treasurer (now director) is authorized to pay out funds of the state in the treasurer's hands only upon warrants signed by the Governor and countersigned by the Comptroller General, or upon drafts signed by the President of the Senate, and the Speaker of the House of Representatives for sums due to the members and officers of their respective bodies; and a petition seeking a writ of mandamus

directing the state treasurer (now director) to honor and pay, when and if presented, a warrant which the petition failed to show had been executed as required by law, so that there was no failure of the treasurer (now director) to perform the treasurer's official duty in paying a warrant properly executed and presented to the treasurer, alleged no cause of action, and was properly dismissed. *Barwick v. Roberts*, 188 Ga. 655, 4 S.E.2d 664 (1939) (decided prior to Executive Reorganization Act of 1972).

Cited in *Gregory v. Hamilton*, 215 Ga. 735, 113 S.E.2d 395 (1960).

OPINIONS OF THE ATTORNEY GENERAL

Director authorized but not required to make advance payments. — The state treasurer (now director) is not required to make payment under this section, but is "authorized" to make payment under the statute;

further, if payments are made semi-monthly, the mid-month payment should not exceed the 75 percent limitation. 1971 Op. Att'y Gen. No. 71-59.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, §§ 6, 7. 63C Am. Jur. 2d, Public Officers and Employees, §§ 230 et seq., 241, 346, 363, 492. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 63.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 58, 61, 93, 94, 299 et seq.,

356, 365 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25. 81A C.J.S., States, §§ 235 et seq., 252, 373 et seq., 393.

ALR. — Particularity of specification of purpose required in appropriation bill, 20 ALR 981.

50-5A-8. State government expenses to be paid by Governor's warrant drawn on appropriations.

The costs and expenses of the maintenance and support of every department, commission, bureau, and other branch or agency of the state government shall be paid out of funds in the state treasury by warrant of the Governor drawn on appropriations duly made by the General Assembly. (Ga. L. 1927, p. 311, § 2; Code 1933, § 40-1102; Code 1981, § 50-5-9; Code 1981, § 50-5A-8, as redesignated by Ga. L. 1993, p. 1402, § 2.)

JUDICIAL DECISIONS

Comptroller General is not authorized to draw warrant upon director. *Irons v. Harrison*, 185 Ga. 244, 194 S.E. 749 (1937).

Cited in *Talmadge v. Cordell*, 170 Ga. 13, 152 S.E. 91 (1930).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 252 et seq., 346. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 63.

C.J.S. — 81A C.J.S., States, §§ 374 et seq., 393.

50-5A-9. Assignment to Department of Administrative Services for administrative purposes.

The Office of Treasury and Fiscal Services shall be assigned for administrative purposes only to the Department of Administrative Services, as provided in Code Section 50-4-3. (Code 1981, § 50-5A-9, enacted by Ga. L. 1993, p. 1402, § 2.)

50-5A-10. Transfer of powers and duties from former Fiscal Division; Georgia State Financing and Investment Commission; director of Office of Treasury and Fiscal Services.

The Office of Treasury and Fiscal Services and its director shall be in all respects the successor agency to, and shall assume all the powers and duties of, the former Fiscal Division of the Department of Administrative Services and its director. Without limiting the generality of the foregoing, the director of the Office of Treasury and Fiscal Services shall serve as a member of the Georgia State Financing and Investment Commission; and for that purpose the director of the Office of Treasury and Fiscal Services shall also be designated as the director of the Fiscal Division of the Department of Administrative Services. (Code 1981, § 50-5A-10, enacted by Ga. L. 1993, p. 1402, § 2.)

50-5A-11. Records not constituting public records.

(a) The following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

- (1) Participant account balances in the local government investment pool;
- (2) All wiring or Automated Clearing House transfer of funds instructions;
- (3) Account analysis statements received or prepared by the staff of the Office of Treasury and Fiscal Services;
- (4) All bank account numbers in the possession of the Office of Treasury and Fiscal Services and any record or document containing such numbers;
- (5) All proprietary computer software in the possession or under the control of the Office of Treasury and Fiscal Services; and

(6) All security codes and procedures related to physical, electronic, or other access to the Office of Treasury and Fiscal Services, its systems, and its software.

(b) For a period from the opening of bank accounts until such time as those bank accounts are closed, the local government investment pool resolutions which pertain to the opening and maintenance of bank accounts shall not constitute public records and shall not be open to inspection by the general public.

(c) For a period from the date of creation of the record until the end of the calendar quarter in which the record is created, the following records, or portions thereof, shall not constitute public records and shall not be open to inspection by the general public:

(1) Investment trade tickets; and

(2) Bank statements of the Office of Treasury and Fiscal Services.

(d) For a period from the date of creation of the record until 30 days after adoption, bank fee payment schedules shall not constitute public records and shall not be open to inspection by the general public.

(e) The restrictions of subsections (a), (b), (c), and (d) of this Code section shall not apply to access:

(1) Required by law, including disclosures required by subpoena or other legal process of a court or administrative agency having competent jurisdiction in legal proceedings where the State of Georgia or the Office of Treasury and Fiscal Services is a party;

(2) In prosecutions or other court actions to which the State of Georgia or the Office of Treasury and Fiscal Services is a party;

(3) Given to federal or state regulatory or law enforcement agencies;

(4) Given to any person or entity in connection with its account in the local government investment pool managed by the Office of Treasury and Fiscal Services pursuant to Chapter 83 of Title 36, the "Local Government Investment Pool Act"; or

(5) Given to the Governor, the Attorney General and the Department of Law, the Office of Planning and Budget, officers of the General Assembly, the legislative budget offices, the state accounting officer and the State Accounting Office, the state auditor and the Department of Audits and Accounts, or the State Depository Board for use and public disclosure in the ordinary performance of those officers' and offices' duties. (Code 1981, § 50-5A-11, enacted by Ga. L. 1997, p. 569, § 1; Ga. L. 2005, p. 694, § 4/HB 293.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2002, “Department of Audits and Accounts” was substituted for “Department of Audits” in paragraph (e)(5).

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 306 (1997).

CHAPTER 5B

STATE ACCOUNTING OFFICE

Sec.		Sec.	
50-5B-1.	Office created; state accounting officer.	50-5B-4.	Obligations of state government organizations with respect to the state accounting officer.
50-5B-2.	Administrative units; directors; employees.	50-5B-5.	Rules and regulations governing travel.
50-5B-3.	Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.		

50-5B-1. Office created; state accounting officer.

(a) The State Accounting Office is created and shall be administered by the state accounting officer.

(b) The state accounting officer shall be appointed by the Governor and shall serve at the pleasure of the Governor.

(c) Beginning July 1, 2005, the state accounting officer shall receive an annual salary to be set by the Governor. The state accounting officer shall also be reimbursed for all actual and necessary expenses incurred by him or her in carrying out his or her official duties.

(d) The state accounting officer shall be required to take and subscribe before the Governor an oath to discharge faithfully and impartially the duties of such office, which oath shall be in addition to the oath required of all civil officers. (Code 1981, § 50-5B-1, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

50-5B-2. Administrative units; directors; employees.

(a) The state accounting officer shall establish such units within the State Accounting Office as he or she deems proper for its administration, including The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys' Council of the State of Georgia as separate units with distinct accounting functions, and shall designate persons to be directors and assistant directors of such units to exercise such authority as he or she may delegate to them in writing.

(b) The state accounting officer shall have the authority, within budgetary limitations, to employ as many persons as he or she deems necessary for the administration of the office and for the discharge of the duties of the office. The state accounting officer shall issue all necessary directions, instructions, orders, and rules applicable to such persons. He or she shall have authority, as he or she deems proper, to employ, assign, compensate,

and discharge employees of the office within the limitations of the office's appropriation, the requirements of the State Personnel Administration, and restrictions set forth by law. (Code 1981, § 50-5B-2, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2008, p. 577, § 21/SB 396; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2008 amendment, effective July 1, 2008, inserted “, including The Council of Superior Court Judges of Georgia and the Prosecuting Attorneys’ Council of the State of Georgia as separate units with distinct accounting functions,” near the middle of subsection (a).

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the end of the last sentence of subsection (b).

50-5B-3. Duties of the state accounting officer; recommendations for improving cash management practices; implementing policies.

(a) The state accounting officer shall:

(1) Prescribe state-wide accounting policies, procedures, and practices;

(2) Prescribe, develop, operate, and maintain uniform state accounting systems for all state government organizations which facilitate financial accounting and reporting in accordance with generally accepted accounting principles and also meet state and federal accounting and financial reporting requirements;

(3) Prescribe the manner in which disbursements shall be made by state government organizations;

(4) Prescribe and supervise the installation of any changes in the state accounting information systems necessary to secure and maintain internal control and facilitate the recording of accounting data for the purpose of preparing reliable, timely, and meaningful statements and reports;

(5) Manage the state's accounting, payroll, and human capital systems;

(6) Using generally accepted accounting principles, prepare the state's financial statements and other reports in accordance with legal requirements;

(7) Provide annual financial statements and other reports to the state auditor and other auditors, as appropriate, for review and certification when required by statute or federal regulation;

(8) Develop interim reports on the financial condition and budgetary compliance of the state and various state organizations;

(9) Determine the proper classification for accounting and reporting purposes of all assets, liabilities, revenues, expenditures, fund balances,

funds, and accounts in compliance with legal requirements and generally accepted accounting principles and prescribe a uniform classification of accounts and other accounting identifiers which shall be used by all state organizations;

(10) Develop processes and systems to improve accountability and enhanced collection of accounts receivable due to the state. In developing these processes, the state accounting officer may prescribe procedures to allow for the recognition of uncollectible accounts for financial reporting purposes. He or she may also develop guidelines to allow uncollectible debts to be removed from active collection processes. This recognition shall not remove or diminish the state's claim on accounts or debt owed to the state; and

(11) Develop processes and systems to improve accountability and enhance efficiency for disbursement of funds and management of accounts payable.

(b) The state accounting officer may recommend processes and systems to improve the cash management practices of the state to the State Depository Board. The state accounting officer in cooperation with the Office of Treasury and Fiscal Services may prescribe policies and procedures to implement the policies of the board. (Code 1981, § 50-5B-3, enacted by Ga. L. 2005, p. 694, § 1/HB 293; Ga. L. 2006, p. 72, § 50/SB 465.)

50-5B-4. Obligations of state government organizations with respect to the state accounting officer.

(a) As used in this chapter, the term "organization of state government" shall mean, without limitation, any agency, authority, department, institution, board, bureau, commission, committee, office, or instrumentality of the State of Georgia. Such term shall not include any entity of local government, including, but not limited to, a county, municipality, consolidated government, board of education, or local authority, or an instrumentality of any such entity.

(b) All organizations of state government and all officers, agents, and employees thereof shall conform to and comply with the rules, regulations, policies, procedures, and forms devised, promulgated, and installed by the state accounting officer.

(c) All organizations of state government shall submit statements, reports, information, and data necessary to enable the state accounting officer to complete the reports required under this Code section and Code Section 50-5B-3.

(d) All organizations of state government may only create and maintain accounting systems or subsidiary accounting systems that have been approved by the state accounting officer.

(e) All organizations of state government shall provide lease information to the state accounting officer to permit the state accounting officer to properly account for and report all capital and operating leases.

(f) All organizations of state government shall provide information to the state accounting officer necessary to properly account for and report real property and personal property.

(g) All information and reports required in this Code section shall be provided in the form and within the time frame prescribed by the state accounting officer. (Code 1981, § 50-5B-4, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

50-5B-5. Rules and regulations governing travel.

The state accounting officer in cooperation with the Office of Planning and Budget is authorized to and shall adopt rules and regulations governing in-state and out-of-state travel and travel reimbursement that promote economy and efficiency in state government and which treat employees fairly and equitably. (Code 1981, § 50-5B-5, enacted by Ga. L. 2005, p. 694, § 1/HB 293.)

CHAPTER 6

DEPARTMENT OF AUDITS AND ACCOUNTS

Article 1

General Provisions

Sec.	
50-6-1.	Creation of department; state auditor as head; qualifications; election procedure; term; vacancy.
50-6-2.	Department to have suitable offices, equipment, and conveniences at state expense.
50-6-3.	Department to audit all state institutions; other auditing agencies not authorized.
50-6-4.	Special examinations, audits, and vulnerability assessments.
50-6-5.	Examination of motor fuel and tobacco products distributors.
50-6-6.	Audit of school and university systems; local boards of education authorized to employ accountants; generally accepted accounting standards; audit report contents'.
50-6-7.	State officials to produce books, records, and other papers to the state auditor for examination.
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Article 2

State Auditor

Sec.	
50-6-20.	Salary, expenses, duties, bond.
50-6-21.	Investigation expenses.
50-6-22.	Authority to employ officers, assistants.
50-6-23.	Cooperation with appropriations committees.
50-6-24.	Duties and powers generally.
50-6-25.	Maintenance of statistics on architectural and engineering firms doing business with the state; ineligibility of firms.
50-6-26.	Preparation and publication of forms; duty to use [Repealed].
50-6-27.	Annual personnel report; copies for General Assembly; public inspection.
50-6-28.	Investigatory duties generally.
50-6-29.	Power to compel production of evidence.
50-6-30.	Conducting hearings; assistance of Attorney General.
50-6-31.	Procedure for contempt of court where summons not obeyed.
50-6-32.	Short title; definitions; creation, operation, and maintenance of searchable website; public access to state expenditure information.

ARTICLE 1

GENERAL PROVISIONS

50-6-1. Creation of department; state auditor as head; qualifications; election procedure; term; vacancy.

(a) The Department of Audits and Accounts is created and established. The head of the department shall be an experienced auditor and accountant with not less than five years' experience as an accountant in the Department of Audits and Accounts or in a governmental agency of a similar nature or shall be a duly certified public accountant with at least five years' practical experience in the duties for which he is certified and who, when named or elected as prescribed in subsection (b) of this Code section and when qualified, shall be known and designated as state auditor.

(b) The state auditor shall be elected by the General Assembly in the following manner: A joint resolution which shall fix a definite time for the nomination and election of the state auditor may be introduced in either branch of the General Assembly. Upon passage of the resolution by a majority vote of the membership of the Senate and House of Representatives it shall be the duty of the Speaker of the House of Representatives to call for the nomination and election of the state auditor at the time specified in the resolution, at which time the name of the qualified person receiving a majority vote of the membership of the House of Representatives shall be transmitted to the Senate for confirmation. Upon the qualified person's receiving a majority vote of the membership of the Senate, he shall be declared the duly elected state auditor; and the Governor shall be notified of his election by the Secretary of the Senate. The Governor is directed to administer the oath of office to the state auditor and to furnish the state auditor with a properly executed commission of office certifying his election.

(c) The term of office of the state auditor shall continue until a successor is elected as provided in subsection (b) of this Code section. In the event of a vacancy in the position of state auditor at a time when the General Assembly is not in session it shall be the duty of the Governor and he is empowered and directed to appoint a state auditor possessing the qualifications as provided in subsection (a) of this Code section who shall serve as state auditor until the next regular session of the General Assembly, at which time the nomination and election of a state auditor shall be held by the General Assembly as provided in subsection (b) of this Code section. (Ga. L. 1923, Ex. Sess., p. 7, § 1; Code 1933, § 40-1801; Ga. L. 1943, p. 361, § 1; Ga. L. 1945, p. 115, § 1.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-2. Department to have suitable offices, equipment, and conveniences at state expense.

The Department of Audits and Accounts shall be provided with suitable offices at the state capital furnished at the state's expense, as may appear proper and necessary. The department shall be furnished, from time to time, with necessary equipment, furniture, fuel, light, and other proper conveniences for the transaction of the business of the department, the expense of which shall be paid by the state in the same manner as the expenses of other offices at the capital are paid. (Ga. L. 1923, Ex. Sess., p. 7, § 10; Code 1933, § 40-1804.)

50-6-3. Department to audit all state institutions; other auditing agencies not authorized.

The Department of Audits and Accounts shall audit all state institutions. No official of the state shall have authority to employ or hire any other auditing agency. (Ga. L. 1925, p. 256, § 3; Code 1933, § 40-1811.)

OPINIONS OF THE ATTORNEY GENERAL

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The

management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att’y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 245 et seq., 388, 389.

50-6-4. Special examinations, audits, and vulnerability assessments.

The Governor, the Appropriations Committee of the House of Representatives, or the Appropriations Committee of the Senate shall have the right and authority to direct and require the state auditor to make a special examination into and audit of all the books, records, accounts, vouchers, warrants, bills, and other papers, records, financial transactions, and management of any department, institution, agency, commission, bureau, authority, or office of the state at any time. The state auditor may conduct special examinations and audits which are, without limitation, financial audits (including financial related audits and financial statement audits), compliance audits, performance audits, and vulnerability assessments or reviews. Without limitation, vulnerability assessments or reviews may be made with respect to any electronic financial information systems; other information, management, or operational systems; computers; computer operating and applications software; computing networks; Internet websites; and data processing centers. Tests conducted in connection with such reviews and assessments may include, but are not limited to, penetration testing and network, web, and data base scanning. (Ga. L. 1923, Ex. Sess., p. 7, § 5; Code 1933, § 40-1806; Ga. L. 2002, p. 524, § 1; Ga. L. 2008, p. 522, § 1/SB 300.)

The 2008 amendment, effective July 1, 2008, in the first sentence, substituted “The Governor” for “Either the governor” at the

beginning, and inserted “authority,” near the end.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-5. Examination of motor fuel and tobacco products distributors.

The state auditor shall, upon the request of either the Governor or the state revenue commissioner, make an examination into and report upon the necessary books, records, and accounts of those persons, firms, and corporations required by law to pay an occupational tax as distributors of motor fuels and also, at the request of the state revenue commissioner, of those persons, firms, and corporations required by law to pay a tax upon the retail sales price of cigarettes, cigars, and loose or smokeless tobacco, as prescribed in Code Section 48-11-2. The examination is to be made at such time as shall be fixed by the state revenue commissioner and for the purpose and to the extent of ascertaining whether or not the tax has been paid and collected as provided by law. (Ga. L. 1923, Ex. Sess., p. 7, § 6; Code 1933, § 40-1807; Ga. L. 2003, p. 665, § 44.)

Editor's notes. — Ga. L. 2003, p. 665, § 1, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'State and Local Tax Revision Act of 2003.'"

Law reviews. — For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 233 (2003).

OPINIONS OF THE ATTORNEY GENERAL

Department of Audits and Accounts is part of executive branch of state government. 1970 Op. Att'y Gen. No. 70-37.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-6. Audit of school and university systems; local boards of education authorized to employ accountants; generally accepted accounting standards; audit report contents'.

(a) It shall be the duty of the Department of Audits and Accounts thoroughly to audit and check the books and accounts of the county superintendents of schools and treasurers of local school systems, of municipal systems, of the several units of the University System of Georgia, and of all other schools receiving state aid and making regular and annual reports to the State School Superintendent, showing the amount received, for what purpose received, and for what purposes expended. All such funds held by officials must be kept in banks separate from their individual bank accounts.

(b) Notwithstanding any other provisions of this chapter, the local boards of education of the several county, independent, and area public school systems of this state shall be authorized to have an additional audit made of the books, records, and accounts of the public school system over which any such board has jurisdiction. The local boards of education shall be authorized to employ certified public accountants of this state to make the audits and to expend funds for the audits which are received by any such board for educational purposes.

(c) All audits of such public school systems shall be conducted in conformity with generally accepted standards and principles of governmental accounting and auditing and shall be subject to the standards, rules, and ethics promulgated by the Georgia Society of Certified Public Accountants and the American Institute of Certified Public Accountants. The audit report shall include the auditor's unqualified opinion upon the presentation of the financial position and the results of the operations of the public school system which is audited. If the auditor is unable to express an unqualified opinion, he shall so state and shall further detail the reasons for qualification or disclaimer of opinion including recommendations necessary to make possible future unqualified opinions. (Ga. L. 1919, p. 288, § 65; Ga. L. 1931, p. 7, § 96; Code 1933, § 40-1812; Ga. L. 1965, p. 668, § 1; Ga. L. 1994, p. 97, § 50.)

JUDICIAL DECISIONS

Effect of local Act providing for independent audit. — O.C.G.A. § 50-6-6(a) imposes a duty upon the Department of Audits and Accounts to conduct an audit of all schools receiving state aid. O.C.G.A. § 50-6-6(b) authorizes local boards of education to have an additional audit. Thus, a local Act which provides for an independent audit does not conflict with the general Act but simply requires the county board to do that which the general Act says it may do. *Glynn County Bd. of Educ. v. Lane*, 261 Ga. 544, 407 S.E.2d 754 (1991).

Separate bank accounts. — The provision of this section, that all public funds held by officials must be kept in banks separate from their individual accounts can be understood not as requiring officials to deposit public money in a bank, but as meaning that if the officials so deposit the account must be separate from their individual accounts. It is

unlikely that the legislature by these brief words intended to make all banks public depositories and relieve the officials of responsibility, with no provision for selecting proper banks or taking security from them. *Whipple v. American Sur. Co.*, 92 F.2d 673 (5th Cir. 1937).

Agenda of school board is discretionary. — A citizen was not entitled to a writ of mandamus directing a school board to place the citizen on the board's agenda because setting the agenda was a discretionary act that was not subject to mandamus and none of the statutes cited by the citizen, O.C.G.A. §§ 20-2-1160(a), 45-10-1, and 50-6-6(b), imposed a duty on the board to place the citizen on the board's agenda. *James v. Montgomery County Bd. of Educ.*, 283 Ga. 517, 661 S.E.2d 535 (2008).

Cited in *Landrum v. Thomas*, 52 Ga. App. 257, 183 S.E. 140 (1935); *Mathew v. Ellis*, 214 Ga. 665, 107 S.E.2d 181 (1959).

OPINIONS OF THE ATTORNEY GENERAL

This section on its face is constitutional. 1963-65 Op. Att'y Gen. p. 731.

Audit of noneducational funds. — The language “books, records, and accounts of the public school system over which any such board has jurisdiction” is broad enough to lead a school board to conclude that it could utilize public school funds to procure a private audit not only of educational funds, but also of all noneducational funds under the board’s jurisdiction; however, such use would be unconstitutional by Ga. Const. 1976, Art. IX, Sec. V, Para. I (see Ga. Const. 1983, Art. IX, Sec. IV, Para. II). 1963-65 Op. Att’y Gen. p. 731.

Expenditure of common school funds by local school boards. — Local school boards may expend common school funds to employ certified public accountants to audit the records and accounts of the school system the boards administer. 1976 Op. Att’y Gen. No. 76-72.

Department as part of executive branch. — Department of Audits and Accounts is part of executive branch of state government because the duties of the department are similar to the traditional duties of a state department of audits and relate closely to the executive branch of the government. 1970 Op. Att’y Gen. No. 70-37.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 245 et seq.

50-6-7. State officials to produce books, records, and other papers to the state auditor for examination.

All officers, agents, employees, departments, institutions, commissions, authorities, and bureaus of the state shall produce and turn over to the state auditor or his or her assistants for examination and audit, whenever demanded by the state auditor, all of their books, records, accounts, vouchers, warrants, bills, and other papers dealing with or reflecting upon the financial transactions and management of such department, institution, agency, commission, authority, bureau, or office, including any and all cash on hand, but not including cash in banks, the amount of cash in banks to be ascertained by certificate furnished to the state auditor by the bank. (Ga. L. 1923, Ex. Sess., p. 7, § 7; Code 1933, § 40-1808; Ga. L. 2005, p. 694, § 5/HB 293; Ga. L. 2008, p. 522, § 2/SB 300.)

The 2008 amendment, effective July 1, 2008, inserted “authorities,” near the beginning, substituted “authority, bureau, or of-

fice” for “bureau, or officer” near the middle, and inserted “to” preceding “the state auditor” near the end.

OPINIONS OF THE ATTORNEY GENERAL

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The

management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor and the State Depository Board. 1993 Op. Att’y Gen. No. 93-4.

RESEARCH REFERENCES

ALR. — Construction and application, under state law, of doctrine of “executive privilege,” 10 ALR4th 355.

50-6-8. Chapter does not affect Department of Banking and Finance.

This chapter shall in no way affect the rights, powers, and duties of the Department of Banking and Finance. (Ga. L. 1923, Ex. Sess., p. 7, § 9; Code 1933, § 40-1810.)

50-6-9. Inspection of work papers and preliminary drafts of state auditor.

(a) Work papers and preliminary drafts of reports created in the course of the discharge of duties and powers of the Department of Audits and Accounts and the state auditor shall not be subject to inspection as public records until an audit or special examination is concluded and a report pertaining to those work papers or preliminary drafts is released as a public record, if a report is to be done. If a public request to inspect such documents has been pending for at least six months, the state auditor’s decision not to disclose the documents shall be subject to judicial review in the Superior Court of Fulton County. On judicial review, the state auditor shall have the burden of establishing that the state’s interest in nondisclosure outweighs the public interest in access to the records.

(b) If in performing a vulnerability assessment or review the state auditor determines in his or her discretion that a vulnerability or security deficiency may exist, such findings and related work papers shall not be disclosed publicly or otherwise except as determined by the state auditor. The findings shall not be considered a public record until the state auditor determines no material risk is present from disclosure. Those parts of findings and work papers which identify the methods of the state auditor or which may cause or perpetuate vulnerability shall remain confidential and protected from disclosure until the state auditor otherwise directs. A decision of the state auditor not to disclose documents pursuant to this subsection shall be subject to judicial review in the Superior Court of Fulton County, provided a public request to inspect such documents has been pending for at least six months. The state auditor shall have the burden of establishing that the state’s interest in nondisclosure outweighs the public interest in access to the records. (Code 1981, § 50-6-9, enacted by Ga. L. 2002, p. 524, § 2.)

ARTICLE 2

STATE AUDITOR

50-6-20. Salary, expenses, duties, bond.

The state auditor shall be paid a salary which may be recommended by the Governor and shall be fixed by the Legislative Services Committee created under Code Section 28-4-1 and shall also be reimbursed for all actual and necessary expenses incurred by the state auditor in carrying out his or her official duties. Until the first action of the Legislative Services Committee to fix the salary of the state auditor, the compensation of the state auditor shall continue unchanged. The state auditor shall devote his or her entire time to the performance of the duties of the office of state auditor and shall give bond, to be filed with and approved by the Comptroller General, in the sum of \$10,000.00, payable to the Governor and the Governor's successors in office, conditioned that the state auditor shall truly and faithfully perform the duties of the office of state auditor and shall account for all public funds coming into the state auditor's hands or under the state auditor's control, the premium on which bond shall be paid by the state. (Ga. L. 1923, Ex. Sess., p. 7, § 2; Ga. L. 1925, p. 256, § 1; Code 1933, § 40-1802; Ga. L. 1943, p. 361, § 2; Ga. L. 1947, p. 670, § 1; Ga. L. 1999, p. 910, § 7; Ga. L. 2001, p. 783, § 2.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 287, 288. Law and Procedure, §§ 10 et seq., 24 et seq., 46, 106 et seq. 81A C.J.S., States, §§ 201 et seq., 235 et seq., 245 et seq.

C.J.S. — 73 C.J.S., Public Administrative

50-6-21. Investigation expenses.

The state auditor is authorized to spend any available money to cover the expenses of investigations and to charge the same to the expenses of his department. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 287. Law and Procedure, § 153 et seq. 81A C.J.S., States, § 201 et seq.

C.J.S. — 73 C.J.S., Public Administrative

50-6-22. Authority to employ officers, assistants.

The state auditor is authorized and empowered to appoint and employ officers and assistants for the Department of Audits and Accounts, each of

whom shall hold office at the discretion of the state auditor. (Ga. L. 1925, p. 256, § 2; Code 1933, § 40-1803.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 278, 288.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 10 et seq. 81A C.J.S., States, § 201 et seq.

50-6-23. Cooperation with appropriations committees.

The state auditor shall cooperate with and shall furnish all information requested by the appropriations committees of the General Assembly. (Ga. L. 1923, Ex. Sess., p. 7, § 8; Code 1933, § 40-1809.)

50-6-24. Duties and powers generally.

The duties and powers of the state auditor shall be as follows:

(1) Reserved;

(2) To examine thoroughly all financial transactions of all the state departments, institutions, agencies, commissions, bureaus, authorities, and officers and to keep such accounting records as are necessary to provide and maintain a current check upon the fiscal affairs and transactions of all state departments, institutions, agencies, etc.;

(3) To examine and audit thoroughly, at least once a year and more frequently if possible, each and all of the books, records, accounts, vouchers, warrants, bills, and all other papers and records of each and every department, institution, agency, commission, bureau, authority, and officer of the state which or who receives funds from the state or which is maintained in whole or in part by public funds, fees, or commissions. Upon the completion of each audit the state auditor shall prepare a complete report of the same in triplicate, one copy of which shall be filed with the official in charge of the department, institution, etc., so examined, one copy of which shall be transmitted to the Governor, and the third copy of which shall be filed in the office of the state auditor as a permanent record and for the use of the press of the state. In any such report, the state auditor shall call special attention to any illegal, improper, or unnecessary expenditures; all failures to keep records and vouchers required by the law; and all inaccuracies, irregularities, and shortages and shall make specific recommendations for the future avoidance of the same;

(4) To prepare annual and, whenever required, special reports to the Governor and the General Assembly showing the general financial operation and management of each state department, institution, agency, commission, authority, and bureau; showing whether or not the same is

being handled in an efficient and economical manner; and calling special attention to any excessive cost of operation or maintenance, any excessive expense, and any excessive price paid for goods, supplies, or labor by any such department, institution, agency, etc.; and

(5) To make special examination into and report of the place and manner in which the funds of the state are kept by the several departments, institutions, agencies, commissions, bureaus, authorities, and officers after the same have been drawn from the state treasury or after the same have been collected and to report who has possession of the same or where the same are deposited, whether the same draw interest, the rate of interest, and whether the same are properly protected by bond, provided that this chapter shall not be construed so as to authorize the state auditor to remove or in any way interfere with any funds so deposited. (Ga. L. 1923, Ex. Sess., p. 7, § 4; Code 1933, § 40-1805; Ga. L. 2005, p. 694, § 6/HB 293; Ga. L. 2008, p. 522, § 3/SB 300.)

The 2008 amendment, effective July 1, 2008, in paragraph (2), inserted "authorities," near the middle; in paragraph (3), in the first sentence, inserted "authority," near the middle, in the second sentence, substituted "shall be filed" for "he shall file", and substituted "shall be transmitted" for "he shall transmit" near the middle, and, in the third sentence, inserted a comma after "report" near the beginning; in paragraph (4), inserted "authority," near the middle; and, in paragraph (5), inserted "authorities," near the middle, and inserted "so as" near the end.

Cross references. — Authority of governing bodies to contract with state auditor for purposes of conducting audits of government entities, § 36-81-7. Duty of state auditor to conduct performance audits of regulatory agencies, § 43-2-4. Reports to state auditor by state agencies regarding professional services fees paid by agencies, § 45-7-70 et seq. Duty of state auditor to perform periodic operational audits of state merit system operations, § 45-20-11.

OPINIONS OF THE ATTORNEY GENERAL

State auditor on departmental irregularities. — State auditor must list and call special attention to all irregularities found in examination of department of the state government and to make available for the information of the public, through the press, such transactions and for the further information of the public officials of the state charged with the responsibility of instituting legal action for a violation of the laws of this state. 1950-51 Op. Att'y Gen. p. 358.

Funds derived from extracurricular school activities. — County board of education cannot expend county education funds for private audit of funds derived from extracurricular school activities; such an expenditure of education funds is not an expenditure for an "educational purpose"

within the meaning of such term. 1962 Op. Att'y Gen. p. 155.

Maintaining custody and control of funds in their custody is a proper matter for regulation by local boards of education, and the regulation, supervision, and control of extracurricular activities to include the maintenance of records pertaining thereto and the audit of funds derived therefrom is a responsibility of the local board of education; should a local board of education desire a private audit of such funds, the expense of obtaining such audit must be paid out of funds derived from such activities. 1962 Op. Att'y Gen. p. 155.

Department as part of executive branch. — Department of Audits and Accounts is part of executive branch of state government

because the duties of the department are similar to the traditional duties of a state department of audits and relate closely to the executive branch of the government. 1970 Op. Att'y Gen. No. 70-37.

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or

armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 247.

50-6-25. Maintenance of statistics on architectural and engineering firms doing business with the state; ineligibility of firms.

(a)(1) The state auditor shall maintain statistics on all architectural and engineering firms doing business with the various departments, agencies, authorities, and public corporations of the state, except the Department of Transportation which shall be governed by paragraph (2) of this subsection. The statistics shall show the percentage of the total state business done by each such firm and shall be made available to the General Assembly and all departments, agencies, authorities, and public corporations of the state using architectural and engineering services. The state auditor shall compile the statistics and shall maintain the statistics current on a monthly basis.

(2) The state auditor shall include in the statistics provided for in paragraph (1) of this subsection all architectural and engineering firms doing business with the Department of Transportation. The Department of Transportation shall report its architectural and engineering contracts to the state auditor in two divisions. In the first division, such department shall report those contracts which are under a gross value of \$1 million at the time of execution by the total contract amount without accounting for any subcontracts. In the second division, such department shall report those contracts with a gross value in excess of \$1 million at the time of execution and shall report all subcontracts thereunder which are in excess of \$25,000.00 as further provided for in this Code section. The statistics shall show the total percentage of state business done by each such firm and shall be made available to the General Assembly and the Department of Transportation. The state auditor shall compile the statistics and shall maintain the statistics current on a monthly basis. With respect to any contract of the Department of Transportation in excess of \$1 million with an architectural or engineering firm which awards a portion of the business in an amount in excess of \$25,000.00 under such contract to one or more subcontractors or joint-venture partners, such department shall report to the state auditor the amount of each subcontractor or joint-venture partner with that portion of the business

awarded to such subcontractor or joint-venture partner, and such amounts shall not be listed or included as business of the Department of Transportation awarded to the architectural or engineering firm receiving the state contract. The architectural or engineering firm shall report to the Department of Transportation, as part of its preaward audit conducted by such department, the amount of business in excess of \$25,000.00 under an anticipated contract which the contractor intends to award to any subcontractor or joint-venture partner, and, after verification that the information reported is correct, the Department of Transportation shall furnish such information to the state auditor. The state auditor shall revise the statistics with respect to architectural and engineering firms currently doing business with the Department of Transportation with respect to contracts outstanding on April 19, 1995, under which all services have not been performed by such architectural and engineering firms in satisfaction of the contract. Such revised statistics shall be computed in accordance with the provisions of this subsection crediting subcontractors and joint-venture partners with business awarded to them and providing that such amounts credited shall not be listed or included as business of the state awarded to the architectural or engineering firm receiving the state contract. Such revised statistics shall be provided by the contractor within 60 days of April 19, 1995, and, after such time, the state auditor shall not be required to revise such statistics.

(b) Any architectural or engineering firm which has received more than 10 percent of the total awarded for such services by the departments, agencies, authorities, and public corporations of the state during any period of 36 months, as calculated pursuant to the provisions of subsection (a) of this Code section and shown by the statistics of the state auditor, shall be ineligible to contract with any department, agency, authority, or public corporation of the state until the firm, during any period of 36 months, has been awarded less than 10 percent of the total awarded for such services; provided, however, that any architectural or engineering firm may contract with the Department of Transportation for not more than 30 percent of the total awarded for such services, 10 percent for transportation purposes, and 20 percent for tollway purposes. (Ga. L. 1970, p. 420; Ga. L. 1971, p. 811, § 1; Ga. L. 1973, p. 640, § 1; Ga. L. 1995, p. 912, § 1; Ga. L. 2008, p. 522, § 4/SB 300.)

The 2008 amendment, effective July 1, 2008, in paragraph (a)(1), inserted “authorities” in the first and second sentences; in paragraph (a)(2), inserted a comma following “partner” in two places; and, in subsection (b), in the first sentence, inserted “authorities” near the beginning, and inserted “authority” near the middle.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “April 19, 1995,” was substituted for “the effective date of this Code section” in two places in paragraph (a)(2).

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Legislation required to allow Department of Transportation to exceed limitations on professional services contracts. — While the provisions of former O.C.G.A. § 32-7-73 do not apply to contracts for professional services which are governed by O.C.G.A. § 50-22-1 et seq., legislation is required to allow the Department of Transportation to exceed the limitations on such professional services contracts found in O.C.G.A. § 50-6-25(b). 1994 Op. Att'y Gen. No. U94-14.

Interaction between 10% threshold and 30% limit. — An architectural or engineering firm which is awarded fees for such services from the state is ineligible for fur-

ther state-general contracts when it exceeds the 10% threshold, but may still contract with the Department of Transportation (DOT) for a maximum of 30% of the total amount awarded, with maximum limits of 10% for DOT-Transportation and 20% for DOT-Tollway. 1992 Op. Att'y Gen. No. 92-35.

Architectural or engineering firms may be considered single firm. — In applying the eligibility requirements for doing business with the state contained in O.C.G.A. § 50-6-25, architectural or engineering firms with a commonality of interest may, under certain circumstances, be considered as a single "firm." 1992 Op. Att'y Gen. No. 92-30.

50-6-26. Preparation and publication of forms; duty to use.

Reserved. Repealed by Ga. L. 2005, p. 694, § 7/HB 293, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1931, p. 7, § 7; Code 1933, § 40-1813; Ga. L. 1984, p. 1004, § 1.

50-6-27. Annual personnel report; copies for General Assembly; public inspection.

The state auditor shall prepare each year a report showing the entire personnel of every office, institution, board, department, and commission in the executive department of the state government, of every state authority, of every university or college in the University System of Georgia, and of every local board of education. The report shall list the name, title or functional area, salary, and travel expense incurred by each such individual, which information shall be allocated to the respective office, institution, board, department, commission, authority, university, college, or local board of education affected. The report shall be kept in the state auditor's office and shall be available for public inspection during regular business hours. Copies of the report or portions of the report shall be made available on request and posted online in a searchable data base. Each office, institution, board, department, commission, authority, university, college, and local board of education is required and directed to submit to the state auditor, in a format prescribed by the state auditor, a listing of all personnel of such office, institution, board, department, commission, authority, university, college, or local board of education showing name, title or functional area, salary, and travel expense for each individual. The state auditor shall furnish each member of the General Assembly a card or

form so that a copy of such report may be requested by any member who desires one. (Ga. L. 1931, p. 7, § 8; Code 1933, § 40-1814; Ga. L. 1978, p. 220, § 1; Ga. L. 1985, p. 668, § 1; Ga. L. 1995, p. 363, § 1; Ga. L. 2008, p. 522, § 5/SB 300.)

The 2008 amendment, effective July 1, 2008, added “and posted online in a searchable” at the end of the fourth sentence.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 247.

50-6-28. Investigatory duties generally.

It shall be the duty of the state auditor to make an investigation as a part of his audit of each and every department of the state government. When there are facts, records, circumstances, or information that indicate mismanagement or misconduct on the part of any official or employee of any department of the state government during either a past or present administration, it shall be the duty of the state auditor to make the full investigation, as provided in Code Section 50-6-29, of the department, official, or employee. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1.)

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 153 et seq.

50-6-29. Power to compel production of evidence.

For the purpose of more completely discharging the duties resting upon him or her and to discover the truth and to make his or her reports truthful in all matters handled by him or her, the state auditor is empowered to conduct hearings, to summon witnesses, to administer oaths, to take the testimony of such witnesses, and to compel the production, inspection, and copying of documentary evidence, including without limitation evidence in electronic form and documentary evidence that is confidential or not available to the general public, at such time and place as he or she may designate for the purpose of investigating and determining the conduct and record of the employees and officials of any department of the state government. Notwithstanding any other provision of law, the state auditor shall have access to inspect, compel production of, and copy confidential information in any form unless the law making such information confidential expressly refers to this Code section and qualifies or supersedes it in that particular instance. When the audit or special examination of the state auditor is concluded, the Department of Audits and Accounts shall redact,

destroy, or return to the custodial agency all confidential information except that information which the state auditor determines is necessary to retain for audit purposes or to disclose for other public purposes. For audit purposes, the state auditor may retain such confidential information in working papers as is minimally necessary to support findings and to comply with generally accepted governmental auditing standards. The state auditor may also disclose confidential information to other officers independently entitled to its receipt, such as for law enforcement purposes. Except as stated above in this Code section, confidential information in the hands of the state auditor shall have the same confidential status as it does in the hands of the custodial entity, and the state auditor shall protect its confidentiality with at least the care and procedures by which it is protected by the custodial agency or substantially equivalent care and procedures. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 2002, p. 524, § 3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 34 et seq.

Law and Procedure, §§ 145, 147. 81A C.J.S., States, § 226 et seq.

C.J.S. — 73 C.J.S., Public Administrative

50-6-30. Conducting hearings; assistance of Attorney General.

A hearing as provided in Code Section 50-6-29 shall be held in the county where the department or institution being investigated is located and may be presided over by the state auditor. The state auditor shall, at any time when he or she deems necessary, request of the Governor, Lieutenant Governor, or Speaker of the House of Representatives legal assistance in conducting the investigation. Upon such request, the Governor shall designate the Attorney General, his or her assistants, or any special assistant attorney general for the purpose of assisting the state auditor in the prosecution of the investigation. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 2008, p. 522, § 6/SB 300.)

The 2008 amendment, effective July 1, 2008, in the first sentence, substituted “and may” for “and shall” near the middle; in the second sentence, inserted “or she” near the beginning, and inserted “, Lieutenant Gov-

ernor, or Speaker of the House of Representatives” in the middle; and, in the third sentence, inserted a comma following “request” near the beginning, and inserted “or her” in the middle.

50-6-31. Procedure for contempt of court where summons not obeyed.

In the event any witness summoned to appear in person or to produce documents fails or refuses to respond to such summons, it shall be the duty of the state auditor to certify the fact of refusal to a judge of the superior court of the county wherein such witness was required and directed to appear for the purpose of giving testimony or producing documentary

evidence, which judge shall issue immediately an order to the party commanding him to appear immediately before the state auditor for the purpose of giving testimony or producing documentary evidence as directed in the notice or summons given by the state auditor. In the event of failure to respond to the summons of the court, the party shall be guilty of contempt of that court and shall be dealt with by the court accordingly. (Code 1933, § 40-1805a, enacted by Ga. L. 1937, p. 421, § 1; Ga. L. 1982, p. 3, § 50.)

Code Commission notes. — Pursuant to inserted following “the court” in the last Code Section 28-9-5, in 1986, a comma was sentence.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 144, 159 et seq. 81A C.J.S., State, §§ 226, 227.

50-6-32. Short title; definitions; creation, operation, and maintenance of searchable website; public access to state expenditure information.

(a) This Code section shall be known and may be cited as the “Transparency in Government Act.”

(b) As used in this Code section, the term:

(1) “Agency” means each department, commission, authority, and agency of the executive branch of government and the Board of Regents of the University System of Georgia.

(2) “Searchable website” means a website that allows the public to review and analyze information identified in subsection (c) of this Code section.

(c) No later than January 1, 2009, the department shall develop and operate a single searchable website accessible by the public, at no cost, that provides the following information pertaining to state fiscal year 2008:

(1) The State of Georgia Comprehensive Annual Financial Report that includes an indexed statement of operations and a statement of financial condition of the state in accordance with governmental generally acceptable accounting principles;

(2) The annual Budgetary Compliance Report for the state that provides, by agency, an indexed report comparing budgeted and actual revenues and expenditures by budgetary units for each organization included in the Appropriations Act, as amended. Such report shall include, at a minimum, a statement of the taxes and other revenues remitted to the state treasury and operating revenues retained by the agency during the immediately preceding fiscal year as well as a statement

of total expenditures made by the agency during the immediately preceding fiscal year;

(3) The annual State of Georgia Single Audit Report that provides, by federal grant, an indexed listing of all expenditures of federal funds and also discloses by state organization any audit findings and corrective actions to be taken;

(4) Salaries and expenses of full-time and part-time employees and board members;

(5) A list of consultant expenses and other professional services expenses;

(6) State Budget in Brief, indexed by reporting agency; and

(7) All performance audits conducted by the department for the preceding five years.

As soon as is practical after the close of each fiscal year, the department shall update the single searchable website for such fiscal year to include the information set forth in this subsection.

(d) No later than January 1, 2010, the department shall develop and add to the searchable website a report of certain grant and contract payments made or due to vendors by agencies reporting through the state's general financial accounting and information system and all payments made through economic and incentive programs operated by the Department of Economic Development, the Department of Labor, the Department of Community Affairs, the Department of Agriculture, and the Georgia Lottery Corporation pertaining to state fiscal year 2009. Such report shall include, at a minimum:

(1) A list of all obligations entered into by the agency during the immediately preceding fiscal year which call for the agency to expend at any time in the aggregate more than \$50,000.00; and

(2) A list of the names of each person, firm, or corporation that has received from the agency during the immediately preceding fiscal year payments in excess of \$20,000.00 in the aggregate, including the amount paid to such person, firm, or corporation during such period.

As soon as is practical after the close of each fiscal year, the department shall update the single searchable website for such fiscal year to include the information set forth in this subsection.

(e) All agencies of state government shall provide to the Department of Audits and Accounts such information as is necessary to accomplish the purposes of this Code section.

(f) Nothing in this Code section shall require the disclosure of informa-

tion which is considered confidential by state or federal law. (Code 1981, § 50-6-32, enacted by Ga. L. 2008, p. 522, § 7/SB 300.)

Effective date. — This Code section became effective July 1, 2008.

CHAPTER 7

DEPARTMENT OF ECONOMIC DEVELOPMENT

Article 1

General Provisions

Sec.

- 50-7-1. Creation of department.
- 50-7-2. Commissioner as head of department; appointment and compensation; assistant commissioner; travel expenses.
- 50-7-3. Creation of board; composition; terms; vacancies; intergovernmental contracts and agreements.
- 50-7-4. Policy-making function of board.
- 50-7-5. Compensation and expenses of board members.
- 50-7-6. Operational procedures for board meetings.
- 50-7-7. Duties and powers of board generally.
- 50-7-8. Additional duties and powers of board.
- 50-7-9. Duty of board to make recommendations to Governor and General Assembly concerning improvement of business conditions.
- 50-7-10. Authorization for board to accept grants and gifts.
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- 50-7-12. Welcome centers authorized; department to construct, operate, and maintain centers; installation and operation of vending machines, automated teller machines, and cash-dispensing machines.
- 50-7-13. Revenue from vending machine sales to offset maintenance costs.
- 50-7-14. Tourist center within vicinity of domestic residence of state citizen elected President.
- 50-7-15. Expenditures for meals and expenses of persons seeking to locate business, industry, or tourist facilities in state.
- 50-7-16. Definitions; acquisition of property by Department of Economic Development.

Sec.

- 50-7-17. Tourism Marketing Program and Tourism Foundation.

Article 2

Promotion of Marine Research and Industrial Activities

- 50-7-30. Purpose of article; authority of department.

Article 3

Geo. L. Smith II Georgia World Congress Center

- 50-7-40. Construction, operation, and improvement of project.
- 50-7-41. Lease of property to authority.

Article 4

Georgia International and Maritime Trade Center

- 50-7-50. Definitions.
- 50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.

Article 5

Civil War Commission

- 50-7-60. Civil War Commission created.
- 50-7-61. Duties and powers of Civil War Commission.
- 50-7-62. Commission assigned to Department of Economic Development for administrative purposes only.
- 50-7-63. Acquisition of lands within boundaries of Civil War battlefields for public access; maintenance, protection, and interpretation of sites.
- 50-7-64. Appointment of commission.

Article 6

Agricultural Tourist Attractions

- 50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

Article 7

Goods and Products Manufactured in Georgia

Sec.

50-7-80. Legislative findings; creation of "Made in Georgia" program.

Editor's notes. — Ga. L. 1989, p. 1641, which amended this chapter, provides in § 18, which was not codified by the General Assembly: "In the event of any substantive conflict between this Act and any other Act

of the 1989 General Assembly, such other Act shall control over this Act."

Cross references. — Official Gardens and Nature Centers, § 12-3-640.

ARTICLE 1

GENERAL PROVISIONS

50-7-1. Creation of department.

There is created as a part of the executive branch of the state government the Department of Economic Development. (Ga. L. 1949, p. 249, § 1; Ga. L. 1962, p. 694, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 29.)

Cross references. — Georgia Tourism Development Act, Art. 5, Ch. 8, T. 48.

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Continuation of former offices and positions under merit system. — All of the offices and positions of employment within the former Department of Commerce which were brought under the merit system continued under the merit system under its successor, the Department of Industry and Trade (now the Department of Industry, Trade,

and Tourism); with the exception of the director and the members of the Board of Commissioners, the board must hire and terminate all personnel subject to the rules and regulations of the State Personnel Board. 1967 Op. Att'y Gen. No. 67-151 (opinion rendered prior to Executive Reorganization Act of 1972 and its progeny).

50-7-2. Commissioner as head of department; appointment and compensation; assistant commissioner; travel expenses.

There is created the office of commissioner of economic development, who shall be executive officer and administrative head of the department. The commissioner shall be appointed by and serve at the pleasure of the Board of Economic Development. The compensation of the commissioner shall be fixed by the board. The commissioner shall assist the board in the performance of its duties, powers, authority, and jurisdiction as the board shall provide. The commissioner shall receive expenses, including mileage, as do other state officials and employees. The board is authorized to

designate an assistant commissioner and such other employees as are necessary to carry out and effectuate this chapter. The commissioner is further authorized and empowered to reimburse authorized personnel of the department for the actual cost incurred in the pursuit of official business for all meals, taxis, parking, and the rental of automobiles when the use of such vehicles is less expensive or more efficient than other commercial transportation. (Ga. L. 1959, p. 262, §§ 5, 13; Ga. L. 1962, p. 694, § 6; Ga. L. 1964, p. 181, § 1; Ga. L. 1968, p. 130, § 13; Ga. L. 1968, p. 1411, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 30.)

Cross references. — Reimbursement of expenses of state employees generally, § 45-7-20 et seq.

50-7-3. Creation of board; composition; terms; vacancies; intergovernmental contracts and agreements.

(a) The department shall be under the direction and supervision of a Board of Economic Development.

(b) On and after July 1, 1999, the Board of Economic Development shall consist of one member from each congressional district in the state and nine additional members from the state at large. All members shall be appointed by the Governor, subject to confirmation by the Senate. The initial terms of members shall be as follows: two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2000; two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2001; three members representative of congressional districts and one at-large member shall be appointed for a term ending July 1, 2002; two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2003; and two members representative of congressional districts and two at-large members shall be appointed for a term ending July 1, 2004. Thereafter, all members appointed to the board by the Governor shall be appointed for terms of five years and until their successors are appointed and qualified. In the event of a vacancy during the term of any member by reason of death, resignation, or otherwise, the appointment of a successor by the Governor shall be for the remainder of the unexpired term of such member.

(c) The first members appointed under this Code section shall be appointed for terms which begin July 1, 1999. The members of the Board of Economic Development serving on April 1, 1999, shall remain in office until their successors are appointed and qualified.

(d) In addition to all other powers granted to the Board of Economic Development under this chapter, the board may authorize the Department of Economic Development to enter into and carry out intergovernmental

contracts and agreements for the purpose of providing financial and other assistance in carrying out projects or undertakings which will further the public purposes of development of trade, commerce, industry, and employment opportunities at the state and local levels. The board may authorize such contracts and agreements between the department and other departments, agencies, and entities of state government and may also authorize such contracts and agreements between the department and local development authorities. Any such contracts and agreements shall be awarded pursuant to criteria and procedures developed by the board. Such criteria and procedures shall be designed to effectuate those proposed contracts and agreements which will be most effective in furthering the public purpose of development of trade, commerce, industry, and employment opportunities at the state and local levels. Neither the development of such criteria nor the award of such contracts and agreements shall be subject to Chapter 5 of this title; Chapter 13 of this title; or Article 5 of Chapter 5 of Title 28. The board and the department may expend funds appropriated or otherwise available to the board and the department for the public purposes described in this subsection. (Ga. L. 1949, p. 249, § 2; Ga. L. 1959, p. 262, § 1; Ga. L. 1962, p. 694, § 2; Ga. L. 1983, p. 504, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 1999, p. 1041, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2004, p. 690, § 31.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “this title” was substituted for “Title 50” in two places in subsection (d).

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Board member not ineligible to run for county office. — One’s status as a member of the board of the department will not affect a member’s eligibility to run for county office. 1968 Op. Att’y Gen. No. 68-14.

Presumption of resignation raised by absence from meetings. — The board may include in the board’s by-laws a provision

specifying that any board member missing three or more consecutive meetings without discussing the reason for the absence with the chairman will be presumed to have resigned and that the chairman will notify the Governor of the resignation. 1991 Op. Att’y Gen. No. 91-18.

50-7-4. Policy-making function of board.

The board shall be the policy-determining body for the department and shall have the duties, powers, authority, and jurisdiction provided in this chapter. (Ga. L. 1949, p. 249, § 2; Ga. L. 1959, p. 262, § 1; Ga. L. 1962, p. 694, § 2; Code 1981, § 50-7-3; Code 1981, § 50-7-4, enacted by Ga. L. 1983, p. 504, § 2; Ga. L. 1989, p. 1641, § 14.)

50-7-5. Compensation and expenses of board members.

The members of the board shall receive no compensation for their services but shall be entitled to receive actual expenses incurred by them in

the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees. (Ga. L. 1959, p. 262, §§ 3, 11; Ga. L. 1962, p. 694, § 4; Ga. L. 1989, p. 1641, § 14.)

Cross references. — Reimbursement of expenses of state employees generally, § 45-7-20 et seq.

50-7-6. Operational procedures for board meetings.

The board shall adopt procedures for its own operation and for the transaction of business including, but not limited to, setting a quorum for meetings and for the transaction of business; setting meeting dates, times, and places; and calling meetings. (Ga. L. 1959, p. 262, §§ 4, 12; Ga. L. 1962, p. 694, § 5; Ga. L. 1989, p. 1641, § 14.)

50-7-7. Duties and powers of board generally.

The board shall have the following duties and powers:

(1) To investigate, study, and undertake ways and means of promoting and encouraging the prosperous development and protection of the legitimate interest and welfare of Georgia business, industry, and commerce within and outside the state;

(2) To make and prepare plans and establish long-term policies for the promotion, establishment, development, and expansion of commerce and industry in the state;

(3) To promote and encourage the location, establishment, and development of new businesses and industries within the state and the development and expansion of businesses and industries now or hereafter located in the state;

(4) To promote and encourage the establishment, maintenance, development, and expansion of markets for the products of Georgia business, industry, and agriculture;

(5) To promote and encourage the use of the commercial, industrial, and agricultural facilities and resources of the state by persons, businesses, and industries located within or outside the state; and particularly to promote and encourage the expansion and development of industries processing or using agricultural, timber, timber products, and natural resources of the state;

(6) To establish, develop, and maintain an effective business information service, both for the direct assistance of business and industry of the state and for the encouragement of industries outside the state to use commercial, industrial, and agricultural facilities within the state;

(7) To promote and encourage the establishment, development, and maintenance of commerce and trade between this state and other states and foreign countries; to plan for the removal of, and to devise and put into operation ways and means of removing, trade barriers of any kind which in any way hamper, burden, restrict, or interfere with the free flow of commerce and trade between this state and other states; and

(8) To plan and conduct a program of information and publicity designed to attract tourists, visitors, and other interested persons from outside the state to this state and also to encourage and coordinate the efforts of other public and private organizations or groups of citizens to publicize the facilities and attractions of the state for the same purposes. (Ga. L. 1949, p. 249, § 14; Ga. L. 1959, p. 262, § 15; Ga. L. 1962, p. 694, § 7; Ga. L. 1989, p. 1641, § 14.)

Cross references. — Powers and duties of State Board of Education relating to vocational education generally, Ch. 4, T. 20.

Conducting of industrial research by Georgia Tech Research Institute, Ch. 11, T. 20.

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Department is authorized to conduct labor availability study for a city and may do so with money the department receives from the Governor's emergency fund. 1969 Op. Att'y Gen. No. 69-389.

Limits on assistance in acquisition of industrial park. — While the Department of Community Development (now Department of Industry, Trade, and Tourism) is authorized to "coordinate, counsel and advise" with local governmental agencies as well as other public or private organizations in their promotional and planning activities, the department is unauthorized to spend state funds to assist a county development authority to acquire property for an industrial park. 1974 Op. Att'y Gen. No. 74-11.

Authorization to contract for installation of signs. — A contract for the installation of

"highway welcome signs" to be erected on the Georgia side of the state line on state road rights of way where the various highways enter the state is authorized. 1963-65 Op. Att'y Gen. p. 280.

Purchasing of gifts for representatives of industries. — The purchase of cuff links and the decorative attachment to key rings designed in the shape of this state for controlled distribution to representatives of industries which the department is attempting to encourage to locate or expand operations in Georgia is authorized by this section and is not repugnant to Ga. Const. 1976, Art. III, Sec. VIII, Para. XII (see Ga. Const. 1983, Art. III, Sec. VI, Para. VI) since the elements of gratuity are merely incidental to their dominant function of advertising and promotion. 1963-65 Op. Att'y Gen. p. 558.

50-7-8. Additional duties and powers of board.

The board shall also have the following duties and powers:

(1) To conduct and make such surveys and investigations, to gather and compile such information, and to make and prepare such reports, plans, and maps as may be necessary or proper effectually to discharge the duties and exercise the powers of the board enumerated in this article;

(2) To engage in and promote and encourage research designed to further new and more extensive uses of the agricultural and natural resources or other products or resources of the state and designed to develop new products and industrial processes;

(3) To study trends and developments in business, industry, and agriculture in the state and analyze such trends and developments and the reasons therefor; to study costs and other factors underlying the successful operation of businesses and industries in the state; and to make recommendations regarding circumstances promoting or hampering industrial or agricultural development;

(4) To collect, compile, and publish periodically a census of business and industry in the state with the cooperation of other agencies, and to analyze and publish information relating to current conditions of business, industry, and agriculture in the state;

(5) To compile, publish, and make available for distribution to interested persons the results of any and all studies, surveys, and investigations; any and all information gathered; and any and all reports made and plans and maps prepared;

(6) To coordinate any of its activities, efforts, or functions with those of any other agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or functions similar to those of the board, and to cooperate, counsel, and advise with such agencies;

(7) To cooperate, counsel, and advise with and to encourage and promote coordination in the efforts of other organizations or groups within the state, public or private, engaged in publicizing the advantages, attractions, or resources of the state;

(8) To cooperate, counsel, and advise with municipal, county, regional, or other local planning agencies in the state for the purpose of promoting coordination between the state and localities as to plans, policies, development of commerce, industry, or agriculture, publicity, and other related activities and functions;

(9) To solicit and receive gifts, donations, or contributions from any person, firm, or corporation in furtherance of the services, purposes, duties, responsibilities, or functions vested in the board;

(10) To authorize the Department of Economic Development in accordance with all applicable state laws to contract and make cooperative agreements, contracts, and rental agreements with the United States government; any county, municipality, or local government or any combination thereof; any public or private corporation or firm; any persons whatsoever; or any public authority, agency, commission, or

institution, including agencies of state government for any of the services, purposes, duties, responsibilities, or functions vested in the board;

(11) To authorize the Department of Economic Development to participate with public and private groups, organizations, and businesses in joint marketing projects that promote the economic and tourist development of the State of Georgia and make efficient use of state appropriated marketing funds. In connection with such projects, the department may receive supplies, materials, equipment, services, and other personal property and intangible benefits. It may also issue licenses to others for the use of property in its custody or control, including intellectual property and other personal property, but may not become a joint owner. In acquisitions under this paragraph, the department shall be exempt from the provisions of Chapters 5 and 25 of this title. By way of illustration and not limitation, the department may allow the use of its logo in advertising and on uniforms provided by cooperating entities for wear by department employees. The board shall adopt and amend its policies, regulations, rules, and procedures as necessary to implement this provision and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act," in doing so. In this paragraph, "marketing" means promotion, advertising, signage, public relations, press relations, branding, and use of a "look"; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood. The department will utilize competitive procedures and the Georgia Registry whenever in its reasonable discretion it is in the best interest of the state to do so. The Georgia Technology Authority will retain its authority over technology but will defer to the department in matters of marketing of economic development and implementation in such overlapping areas as creation of kiosks and web page design and operation. The Department of Administrative Services will retain its authority over purchasing in areas not peculiarly germane to marketing implementation, such as printing and shipping, but will defer to the department in matters of marketing of economic development and implementation in overlapping areas;

(12) To assist the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in the administration and performance of the Georgia Music Hall of Fame Authority's duties, powers, responsibilities, and functions as provided in Part 10 of Article 7 of Chapter 3 of Title 12;

(13) To enter into contracts with the Georgia Music Hall of Fame Authority for any purpose necessary or incidental in assisting the Georgia Music Hall of Fame Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of

the Georgia Music Hall of Fame Authority and not on behalf of the department; and provided, further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Music Hall of Fame Authority, including the provision for joint or complementary services, within the scope of their respective powers; and

(14) To induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform the agency or authority's statutory functions. (Ga. L. 1949, p. 249, § 15; Ga. L. 1959, p. 262, §§ 16-18; Ga. L. 1962, p. 694, § 8; Ga. L. 1985, p. 428, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 684, § 1; Ga. L. 2004, p. 690, § 32; Ga. L. 2005, p. 306, §§ 2, 3/SB 125.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “paragraph” was substituted for “subsection” in paragraph (11).

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Limited assistance to localities. — While the department is authorized to “coordinate, counsel, and advise” with local governmental agencies as well as other public or private organizations in their promotional and planning activities, the department is unauthorized to spend state funds to assist a county development authority to acquire property for an industrial park. 1974 Op. Att’y Gen. No. 74-11.

A joint advertising effort between the Department of Industry, Trade, and Tourism and a private industry is within the powers conferred upon the department by the General Assembly under O.C.G.A. § 50-7-8, provided that the department receives or has received the appropriate authorization from the Board of Industry, Trade, and Tourism. 1989 Op. Att’y Gen. No. 89-59.

RESEARCH REFERENCES

ALR. — Applicability of state anti-trust act to interstate transaction, 24 ALR 787.

50-7-9. Duty of board to make recommendations to Governor and General Assembly concerning improvement of business conditions.

The board shall make, from time to time, written recommendations to the Governor and to the General Assembly concerning the improvement of conditions under which business, industry, and agriculture are carried on in the state and the elimination of any restrictions or burdens imposed by law or otherwise which adversely affect or retard the legitimate development and expansion of commerce, business, industry, trade, or agriculture in the state. (Ga. L. 1949, p. 249, § 16; Ga. L. 1959, p. 262, § 19; Ga. L. 1962, p. 694, § 9; Ga. L. 1989, p. 1641, § 14.)

50-7-10. Authorization for board to accept grants and gifts.

The board may accept grants and gifts from the federal government; the state government; any county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organization, public or private; and any individual or groups of individuals. (Ga. L. 1949, p. 249, § 17; Ga. L. 1959, p. 262, § 20; Ga. L. 1962, p. 694, § 10; Ga. L. 1989, p. 1641, § 14.)

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Use of grant to build airport radio beacon. — Although the department may lawfully accept a grant from the Governor's emergency fund, such grant may not be utilized, by contract or otherwise, for the purpose of constructing a radio beacon at the Vidalia Municipal Airport. 1967 Op. Att'y Gen. No. 67-322.

50-7-11. Use by board of accepted grants or gifts.

All funds received by the board from grants or gifts made to and accepted by the board pursuant to Code Section 50-7-10 shall be used by the board to pay the expenses and costs of the operation of the department. (Ga. L. 1949, p. 249, § 18; Ga. L. 1950, p. 182, § 3; Ga. L. 1959, p. 262, § 21; Ga. L. 1962, p. 694, § 11; Ga. L. 1989, p. 1641, § 14.)

50-7-12. Welcome centers authorized; department to construct, operate, and maintain centers; installation and operation of vending machines, automated teller machines, and cash-dispensing machines.

(a) The Governor shall have authority to direct and provide for the construction of welcome centers at or near the point of entrance into this state of any federal highway. The Department of Transportation may exercise the power of eminent domain in acquiring fee simple title to suitable locations for the erection of such welcome centers. Any welcome center acquired prior to April 23, 1969, may be maintained and improved, regardless of whether the fee simple title therefor is in the state.

(b) It shall be the duty of the Department of Economic Development to construct, operate, and maintain the welcome centers and keep them supplied with such information, pamphlets, and other materials as will advertise and publicize the tourist attractions, natural resources, industry, history, and commerce of this state.

(c) The Department of Economic Development, with the concurrence of the Department of Transportation, is further authorized to install or provide for the installation of and to operate or provide for the operation of vending machines and to sell in such machines nonalcoholic beverages, snacks, candy, cigarettes, and other articles as determined by the Department of Economic Development to be necessary or desirable for the

traveling public at reasonable prices. The prices charged for these products will approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise, such prices to be set by the Department of Economic Development. The Department of Economic Development is also authorized to provide for the sale or free distribution of articles and merchandise at the welcome centers in such manner as is deemed to be in the best interest of promoting the tourist trade in this state.

(d) The Department of Economic Development, with the concurrence of the Department of Transportation, is authorized to provide for the installation and operation at welcome centers of automated teller machines and cash-dispensing machines. If so authorized, such machines shall be established, placed, and operated in accordance with applicable law. Such machines shall be placed in welcome centers upon such terms and conditions as shall be deemed by the Department of Economic Development to be in the best interest of the state and the traveling public. (Ga. L. 1951, p. 747, §§ 1, 2; Ga. L. 1953, Nov.-Dec. Sess., p. 185, §§ 2-6; Ga. L. 1960, p. 1097, § 1; Ga. L. 1969, p. 610, §§ 1-3; Ga. L. 1979, p. 132, § 1; Ga. L. 1989, p. 1641, § 14; Ga. L. 1995, p. 416, § 1; Ga. L. 2004, p. 690, § 33.)

Cross references. — Seizure of vending machines containing cigarettes or cigars upon which tax has not been paid, § 48-11-9.

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Departmental duty to preserve and be responsible for upkeep of actual building which comprises welcome center; whereas, it will be the correlative duty of the Department of Transportation to preserve and keep the surrounding grounds in their originally constructed condition. 1969 Op. Att'y Gen. No. 69-332.

Discount coupons to tourist attractions. — The department may print and distribute a booklet of coupons entitling the holder to discounts at various tourist attractions in this state. 1970 Op. Att'y Gen. No. 70-81.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutes or ordinances prohibiting or regulating automatic vending machines, 111 ALR 755; 151 ALR 1195.

50-7-13. Revenue from vending machine sales to offset maintenance costs.

Notwithstanding any provision to the contrary, all net revenue derived from the sale of nonalcoholic beverages, snacks, candy, cigarettes, and other articles from vending machines at welcome centers and tourist centers shall be utilized by the Department of Economic Development to offset the cost of maintenance of all welcome centers and tourist centers and litter pickup in these areas. Notwithstanding any provision to the contrary, all net revenue derived from the sale of nonalcoholic beverages, snacks, candy, cigarettes, and other articles from vending machines at safety rest areas shall be utilized by the Department of Transportation to offset the cost of

maintenance of all safety rest areas and litter pickup in these areas. (Ga. L. 1979, p. 132, § 7; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 34.)

Cross references. — Seizure of vending upon which tax has not been paid, machines containing cigarettes or cigars § 48-11-9.

50-7-14. Tourist center within vicinity of domestic residence of state citizen elected President.

(a) The Governor shall have authority to direct and provide for the construction of a tourist center on real property owned by or which may be acquired by the state within the general vicinity or area of the domestic residence of any citizen of this state when such citizen has been elected President of the United States and the Governor determines that the number of tourists and other persons visiting the area justifies the center.

(b) It shall be the duty of the Department of Economic Development to construct, operate, and maintain the tourist center and keep it supplied with such information, pamphlets, and other materials as will advertise and publicize the tourist attractions, natural resources, industry, history, and commerce of this state.

(c) The Department of Economic Development is further authorized to provide space for other commercial or noncommercial projects in the center and allow the persons to sell or provide such articles or services as may be prescribed in the lease, contract, franchise, or other arrangement, as determined by the department. The Department of Economic Development shall regulate the sale or free distribution of such articles, merchandise, and services by other persons at the center in the manner it deems to be in the best interest of promoting tourist trade in this state and otherwise furthering the purposes for which the center is created. The Department of Economic Development is further authorized to install or provide for the installation of and to operate or provide for the operation of vending machines and to sell in such machines nonalcoholic beverages, snacks, candy, cigarettes, and other articles as determined by the Department of Economic Development to be necessary or desirable for the traveling public at reasonable prices. The prices charged for these products will approximate the prevailing rate within the area for similar items so as not to compete unfairly with private enterprise, such prices to be set by the department.

(d) The Department of Economic Development may also enter into contracts with other state, local, or federal agencies or with other persons to assist it in construction, operation, or maintenance of the center. The department may acquire real and personal property for such purposes. (Ga. L. 1977, p. 200, § 1; Ga. L. 1979, p. 132, § 2; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 35.)

50-7-15. Expenditures for meals and expenses of persons seeking to locate business, industry, or tourist facilities in state.

The Department of Economic Development, in order to make Georgia competitive with other states in securing new business, industry, and tourism, is authorized to expend available funds for the business meals and incidental expenses of bona fide industrial prospects and other persons who attend any meeting at the request of the department to discuss the location or development of new business, industry, or tourism within the state. All such expenditures shall be verified by vouchers showing the date, place, purpose, and persons for whom such expenditures were made. The state auditor shall conduct an audit of such expenditures at least every six months. (Code 1981, § 50-7-15, enacted by Ga. L. 1983, p. 499, § 2; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 36.)

Cross references. — Gratuities prohibited, Ga. Const. 1983, Art. III, Sec. VI, Para. VI.

Editor's notes. — Ga. L. 1983, p. 499, § 1, not codified by the General Assembly, pro-

vides: "It is the intent of this Act to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia."

50-7-16. Definitions; acquisition of property by Department of Economic Development.

(a) As used in this Code section, the term:

(1) "Acquire" means the obtaining of a fee simple interest in real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(2) "Lease" means a written instrument under the terms and conditions of which one party out of its own estate grants and conveys to another party or parties an estate for years retaining a reversion in itself after such grant and conveyance.

(3) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(4) "Project" means a facility to be used in conjunction with trade, commerce, industry, manufacturing, or tourism in the state.

(5) "Rental agreement" means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(b) The Department of Economic Development is authorized to acquire real property and to construct, operate, and maintain such projects as are beneficial to the development of industry, trade, and tourism and to create economic and employment opportunities in the state. The department is authorized, with the approval of the State Properties Commission, to enter into agreements to lease, rent, or convey the real property of any such project with any person in order to accomplish such goals and upon such other terms and conditions as the department may determine to be necessary or convenient for such substantial public benefit and such consideration as may be determined by the department to be fair and equitable to the state under all the circumstances in accordance with the provisions of Article III, Section VI, Paragraph VI of the Constitution of Georgia, relating to gratuities. Subject to such principles, any such lease or rental agreement may be for and in consideration of a minimum of \$1.00 annually for each calendar year or portion thereof paid in kind to the Office of Treasury and Fiscal Services and may arrange for the conveyance of such land for a fixed price, provided that such property be held, constructed, operated, maintained, expanded, or improved by the grantee and its successors and assigns consonant with the purposes of the project and other requirements of the department. (Code 1981, § 50-7-16, enacted by Ga. L. 2004, p. 684, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “Department of Economic Development” was substituted for “Department of Industry, Trade, and Tourism” at the beginning of subsection (b).

50-7-17. Tourism Marketing Program and Tourism Foundation.

(a) *Statement of policy and short title.* The General Assembly finds that it is in the state’s interest to present a cohesive and vibrant message for the promotion of tourism in Georgia. This Code section, therefore, shall be known and may be cited as the “New Georgia Foundation for Tourism Act.”

(b) *Definitions.* As used in this Code section, the term:

(1) “Agency” means any officer, board, department, agency, commission, bureau, authority, public corporation, instrumentality, or other entity of state government when engaged in an activity conducive to marketing which promotes tourism.

(2) “Coordinate” and “coordination” include issuing rules, policies, standards, definitions, specifications, coordination, and other guidance and direction.

(3) “Department” means the Department of Economic Development.

(4) “Implement” and “implementation” include planning, writing, drafting, designing, study, and market analysis; solicitation and acceptance of gifts, contributions, and cooperation; contracting, procurement,

retention of consultants, outsourcing, similar activities, and other activities within the ordinary meaning of the term in this context.

(5) “Market” and “marketing” include promotion, advertising, signage, public relations, press relations, branding, and use of a “look”; creation, use, and licensing of trademark, copyright, and other intellectual property; discounts; and other activities of similar nature or within the term as it is commonly understood.

(c) *Establishment of State-wide Tourism Marketing Program.*

(1) **GENERALLY.** For promotion of tourism in Georgia, the department may establish, implement, and provide for implementing a State-wide Tourism Marketing Program, with common and consistent features for implementation by the department and agencies. Within the State-wide Tourism Marketing Program, the department may establish or authorize various themes and component programs, but such themes and component programs must have common and consistent features with the State-wide Tourism Market Program.

(2) **EMPHASES.** As important and substantial components of the State-wide Tourism Marketing Program, the department will place particular emphasis on branding and on the state’s great heritage and culture.

(3) **SHARING OF POWERS.** In marketing and implementation of marketing for tourism, the department may exercise its powers under paragraphs (9) and (11) of Code Section 50-7-8 and may authorize and delegate to agencies all or parts of such powers for their own implementation.

(d) *Coordination.*

(1) **GENERALLY.** The department will implement the State-wide Tourism Marketing Program and will also coordinate its implementation by individual agencies.

(2) **DELEGATION AND AGENCY RETENTION.** The department may delegate marketing implementation activities to agencies in promotion of tourism and may allow agencies to retain marketing and implementation activities in the course of its coordination. The department will coordinate agencies such that they retain a measure of independence and freedom of action in marketing their own specific activities and functions, consistently with the State-wide Tourism Marketing Program.

(3) **COOPERATION.** In addition to the specific administrative instructions of this Code section, the department, the Georgia Technology Authority, the Department of Administrative Services, and agencies and other departments and state authorities will assist and cooperate with one another for the purposes of this Code section.

(4) **BUDGET.** The department may establish an annual budget covering all the costs of establishing and implementing the State-wide Tourism Marketing Program and determine an equitable basis for prorating all or part of the annual costs among the agencies, subject to approval by the Governor. Upon approval, the Governor may direct that the necessary pro rata share of the agencies assessed be made available for expenditure by the department in the same manner as appropriated funds.

(5) **EXCLUSION FROM APA.** Coordination of marketing and implementation of marketing for promotion of tourism will not be subject to the "Georgia Administrative Procedure Act," Article 1 of Chapter 13 of Title 50.

(6) **AGENCY PUBLICATIONS.** Without limitation, the department may determine when the publication of official reports and similar documents, and the production of similar material in other media (such as film, video, sound, and other electronic forms) are deemed conducive to promoting tourism. Agencies will then publish or produce such material and information using themes, a "look," and other marketing elements promulgated by the department for the State-wide Tourism Marketing Program.

(e) *Georgia Tourism Foundation.*

(1) **ESTABLISHMENT.** There is hereby established the Georgia Tourism Foundation, existing as a public corporation and instrumentality of the state, exclusively limited to the following charitable and public purposes and powers:

(A) To solicit and accept contributions of money and in-kind contributions of services and property for the State-wide Tourism Marketing Program;

(B) To make and disburse contributions to the department for such purposes;

(C) To seek recognition of tax exempt status by the United States Internal Revenue Service and to seek confirmation concerning the deductibility of contributions;

(D) To formulate recommendations for the State-wide Tourism Marketing Program;

(E) Subject to approval of the Governor, to create subsidiaries with like character and powers but with limited missions keyed to particular component programs and activities of the department's State-wide Tourism Marketing Program; and

(F) To provide for additional officers and governance through bylaws which are consistent with the goals of lessening the government

burden in promoting tourism, establishing and maintaining tax exempt status, and soliciting deductible contributions.

(2) **MEMBERS.** The governance of the Georgia Tourism Foundation shall be in members, consisting of:

(A) The commissioner of economic development, who will be chairperson;

(B) The commissioner of natural resources;

(C) Each of the executive directors of the Jekyll Island-State Park Authority, Stone Mountain Memorial Association, Lake Lanier Islands Authority, Agricultural Exposition Authority, North Georgia Mountains Authority, and Southwest Georgia Railroad Excursion Authority;

(D) One representative each from the Aviation, Music, Sports, and Golf Halls of Fame; and

(E) Additional private members appointed by the Governor under foundation bylaws.

The chairpersons of the Senate Economic Development Committee and the House Economic Development and Tourism Committee shall serve as ex officio nonvoting members of the foundation.

(3) **ADMINISTRATION.** The Georgia Tourism Foundation will be attached to the department for administrative purposes. The Attorney General will be the attorney for the foundation. The department may solicit and accept contributions from the foundation and authorize agencies to do so. The department may cooperate and contract with the foundation for their mutual benefit and authorize agencies to do so. Upon any dissolution of the foundation, its assets will devolve in trust to the department or its successor for use only for marketing to promote tourism for Georgia.

(4) **PUBLIC PURPOSE.** The creation of the Georgia Tourism Foundation and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public and charitable purpose. Further, the foundation will be performing an essential governmental function in the exercise of the powers conferred upon it by this Code section. Accordingly, the foundation shall not be subject to taxation or assessment in any manner, including without limitation taxation or assessment upon any transaction, income, money, or other property or activity. The exemptions granted in this Code section may not be extended to any private person or entity. (Code 1981, § 50-7-17, enacted by Ga. L. 2005, p. 306, § 1/SB 125; Ga. L. 2006, p. 72, § 50/SB 465.)

Code Commission notes. — Pursuant to at the subsection level were made italics Code Section 28-9-5, in 2005, the catchlines instead of underscoring and the catchlines

at the paragraph level were made small caps instead of italics throughout this Code section.

ARTICLE 2

PROMOTION OF MARINE RESEARCH AND INDUSTRIAL ACTIVITIES

50-7-30. Purpose of article; authority of department.

The principal activities of the Department of Economic Development under this article are to promote participation in and arrange for the location of marine research and industrial activities. The department may delegate to its officers, agents, and employees such duties as it may deem proper to carry out the purposes of this article. The department may contract with any department, board, or agency of the state, local, or federal government; the University System of Georgia or any of its component units; other public or private colleges and universities; nonprofit organizations; foundations; corporations; private business firms; and individuals as shall be consonant with the purposes of this article. (Ga. L. 1967, p. 12, § 1; Ga. L. 1969, p. 754, § 1; Ga. L. 1972, p. 1015, § 705; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 37.)

Cross references. — Powers and duties of Department of Natural Resources relating to development and utilization of coastal and off-shore waters, § 12-5-210 et seq. Authority of board of regents to establish and operate marine resources extension centers and an institute for oceanographic studies, Ch. 12, T. 20.

ARTICLE 3

GEO. L. SMITH II GEORGIA WORLD CONGRESS CENTER

50-7-40. Construction, operation, and improvement of project.

The Department of Economic Development is authorized to acquire, construct, operate, maintain, expand, and improve a project as such term is defined in paragraph (3) of Code Section 10-9-3, including each of the facilities described in such paragraph, for the purpose of promoting trade, commerce, industry, and employment opportunities within this state for the public good and general welfare and, without limitation of the foregoing, with the approval of the State Properties Commission, to acquire land for such purposes. (Code 1981, § 50-7-40, enacted by Ga. L. 1988, p. 556, § 5; Ga. L. 1989, p. 1641, § 14; Ga. L. 2004, p. 690, § 38.)

50-7-41. Lease of property to authority.

In addition to its authority and duties provided under Code Section 10-9-5, the department shall have the authority with the approval of the

State Properties Commission to lease any improved or unimproved land or other property acquired by it under Code Section 50-7-40 to the Geo. L. Smith II Georgia World Congress Center Authority for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease shall be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of Treasury and Fiscal Services and in further consideration of the reasonable compliance by the authority with the requirement that such property be held, constructed, operated, maintained, expanded, or improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-41, enacted by Ga. L. 1988, p. 556, § 5; Ga. L. 1989, p. 1641, § 14; Ga. L. 1993, p. 1402, § 18.)

ARTICLE 4

GEORGIA INTERNATIONAL AND MARITIME TRADE CENTER

50-7-50. Definitions.

For purposes of this Code section, the following definitions shall apply:

(1) “Department” means the Department of Economic Development.

(2) “Local government” means, individually or in combination, the City of Savannah, Chatham County, or any development authority of either or both.

(3) “Project” means a comprehensive convention and trade center, suitable for multipurpose use for housing trade shows; conventions; cultural, political, musical, educational, entertainment, athletic, or other events; for displaying exhibits of Georgia’s counties, municipalities, industries, and attractions; and for promoting the maritime, transportation, coastal, agricultural, historical, natural, and recreational resources of the State of Georgia, including all facilities necessary or convenient to such purpose, regardless of whether such facilities are contiguous, including, by way of illustration and not limitation, the following facilities: exhibit halls; auditoriums; theaters; restaurants and other facilities for the purveying of foods, beverages, publications, souvenirs, novelties, and goods and services of all kinds, whether operated or purveyed directly or indirectly through concessionaires, licensees or lessees, or otherwise; parking facilities and parking areas in connection therewith; meeting room facilities, including meeting rooms providing for simultaneous translation capabilities for several languages; related lands, buildings, structures, fixtures, equipment, and personalty appurtenant or convenient to the foregoing; and extension, addition, and improvement of

such facilities. (Code 1981, § 50-7-50, enacted by Ga. L. 1994, p. 166, § 1; Ga. L. 2004, p. 690, § 39.)

50-7-51. Authority and duties of department and local government; purposes of local government; lease of property.

(a)(1) The department is authorized to acquire, construct, operate, maintain, expand, and improve a project for the purpose of promoting trade, commerce, industry, and employment opportunities within this state for the public good and general welfare and, without limitation of the foregoing, with the approval of the State Properties Commission, to acquire land for such purposes.

(2) The department may pay the costs of such project from any lawful fund source available for the purpose, including without limitation, where applicable, funds received by appropriation, proceeds of general obligation debt, funds of local government, grants of the United States or any agency or instrumentality thereof, gifts, and otherwise.

(3) The project shall be located in Chatham County, Georgia, and shall be known as the "Georgia International and Maritime Trade Center," except that any facility included within the project may be otherwise designated.

(b) A local government and the department are both authorized to contract with one another whereby local government may exercise on behalf of the department such future responsibility in connection with the construction, operation, management, and maintenance of the project as is now or may be vested in the department; and the department is authorized by such contract to delegate to the local government corresponding responsibilities and powers with respect to the project and to transfer to the local government any and all contracts, plans, documents, or other papers of said department relating to the project, as compensation to the local government under such contract. To the extent provided by such contract with the department, local government on behalf of the department shall acquire, plan, construct, erect, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage the project.

(c) Without limiting the generality of any provision of this article, the general purpose of the local government is declared to be that of acquiring, constructing, equipping, maintaining, and operating the project, in whole or in part, directly or under contract with the department and engaging in such other activities as it deems appropriate to promote trade shows, conventions, and political, musical, educational, entertainment, recreational, athletic, or other events and related tourism within the state so as to promote the use of the project and the use of the industrial, maritime, agricultural, educational, historical, cultural, recreational, commercial, and natural resources of the State of Georgia by those using the project or visiting the state.

(d) The department shall have the authority with the approval of the State Properties Commission to lease any improved or unimproved land or other property acquired by it under this Code section to local government for a term not to exceed 50 years but upon such other terms and conditions as the department may determine necessary or convenient. Any such lease may be for and in consideration of \$1.00 annually for each calendar year or portion thereof paid in kind to and receipted for by the Office of Treasury and Fiscal Services and in further consideration that such property be held, constructed, operated, maintained, expanded, or-improved for the purposes for which the department was authorized to acquire such property. It is determined that such consideration is good and valuable and sufficient consideration for such lease and in the interest of the public welfare of the State of Georgia and its citizens. (Code 1981, § 50-7-51, enacted by Ga. L. 1994, p. 166, § 1; Ga. L. 1998, p. 128, § 50.)

ARTICLE 5

CIVIL WAR COMMISSION

Editor's notes. — By resolution (Ga. L. 1993, p. 1952), the General Assembly in 1993 created a Civil War Commission.

50-7-60. Civil War Commission created.

There is created the Civil War Commission, hereafter referred to as the commission, to coordinate planning, preservation, and promotion of the structures, buildings, sites, and battlefields associated with this significant period of our common heritage. (Code 1981, § 50-7-60, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-61. Duties and powers of Civil War Commission.

(a) The commission is directed to:

(1) Develop a State of Georgia Civil War Sites Heritage Plan. The plan will promote heritage tourism and provide incentives to local landowners and local governments to preserve Civil War battlefields and historic sites. Through cooperative agreements between local governments, landowners, and the commission, such entities will work together to preserve and restore historic sites;

(2) Preserve, conserve, and interpret the legacy of the Civil War in the State of Georgia;

(3) Recognize and interpret important events and geographic locations in the conduct of the Civil War in the State of Georgia, including battle sites associated with Adairsville, Dallas, Lovejoy Station, Marietta, New Hope Church, Resaca, Allatoona, Rocky Face Ridge, Ringgold Gap,

Davis Cross Roads, Buckhead Creek, and Griswoldville, as well as other historic properties associated with the events and consequences of the Civil War;

(4) Recognize and interpret the effect of war on the state's ethnically and culturally diverse civilian population during the war and the postwar reconstruction period;

(5) Establish within the state's Historic Resource Inventory as maintained by the Department of Natural Resources a geographic data base and information system that can be used to locate, track, and cross-reference significant historical and cultural properties, structures, and markers associated with the Civil War;

(6) Acquire or provide funds for the acquisition of Civil War battle-grounds, cemeteries, and other historic properties associated with the Civil War;

(7) Expend funds received from state appropriations and other sources to make grants to municipalities, counties, and nonprofit Civil War organizations for the purposes of maintaining and restoring existing Civil War memorials and cemeteries;

(8) Participate in and encourage efforts to establish a state museum to include displays illuminating Georgia's role in the Civil War and the effects of that war on Georgia and its people; and

(9) Encourage the establishment of reference sections relating to the Civil War in high schools and encourage heritage education programs.

(b) In carrying out its purposes, the commission is authorized:

(1) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(2) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia or any agency or instrumentality thereof or from any county, municipal corporation, or local government or governing body; and

(3) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this commission. (Code 1981, § 50-7-61, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-62. Commission assigned to Department of Economic Development for administrative purposes only.

The commission is assigned to the Department of Economic Development for administrative purposes only. The commissioner of economic

development shall appoint personnel within the Department of Economic Development to facilitate the functions of the commission. (Code 1981, § 50-7-62, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

50-7-63. Acquisition of lands within boundaries of Civil War battlefields for public access; maintenance, protection, and interpretation of sites.

(a) Within the boundaries of Civil War battlefields as provided in the State of Georgia Civil War Sites Heritage Plan, the commission may, with the consent of the owner, acquire by donation, purchase, or exchange lands and interest in Civil War battlefields and memorials together with lands and interest in lands necessary to provide adequate public access to the battlefields and memorials.

(b) The commission may make funds available, subject to appropriations for such purpose, for the maintenance, protection, and interpretation of the battlefields and memorials which may be subject to agreements as provided in Code Section 50-7-61. (Code 1981, § 50-7-63, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

Code Commission notes. — Pursuant to 50-7-61” was substituted for “Section 2 of Code Section 28-9-5, in 2006, “Code Section this resolution” in subsection (b).

50-7-64. Appointment of commission.

(a)(1) The commission shall consist of 15 members to be appointed as follows:

(A) The Governor shall appoint five members;

(B) The President of the Senate shall appoint five members; and

(C) The Speaker of the House of Representatives shall appoint five members.

(2) Members shall serve for four-year terms and shall be eligible for reappointment; provided, however, that with respect to the initial appointments, each appointing authority provided for in paragraph (1) of this subsection shall appoint two members for two-year terms, two members for three-year terms, and one member for a four-year term. The members shall be representative of all of the geographic areas of the state and shall be selected from the state at large with special consideration given to the appointment of persons associated with those groups or organizations with a demonstrated interest in Civil War history and the preservation of associated sites.

(b) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the

unexpired term. The commission shall elect a chairperson and such other officers as it deems necessary. No vacancy on the commission shall impair the right of the quorum to exercise all rights and perform all duties of the commission.

(c) The members of the commission shall receive a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21; and the members of the commission shall not receive any other compensation for their services as such.

(d) The commission shall file an annual report with the Governor and the General Assembly containing a summary of the accomplishments of the commission during the preceding year and the plans of the commission for the following year.

(e) No state funds shall be expended for the purposes of the commission unless specifically appropriated by the General Assembly. (Code 1981, § 50-7-64, enacted by Ga. L. 2006, p. 95, § 3/SB 445.)

Code Commission notes. — Pursuant to O.C.G.A.” was deleted following “Code Section 28-9-5, in 2006, “of the tion 45-7-21” in subsection (c).

ARTICLE 6

AGRICULTURAL TOURIST ATTRACTIONS

Effective date. — This article became effective July 1, 2008.

50-7-70. Legislative findings; definitions; criteria and application process; fee; directional road signs; rules and regulations.

(a) The General Assembly finds that:

(1) Agricultural tourist attractions provide unique opportunities for tourists to enjoy Georgia’s resources; and

(2) Agricultural tourist attractions provide an impact on Georgia’s economy and a substantial benefit to Georgia.

(b) As used in this Code section, the term:

(1) “Agricultural tourist attraction” means any agricultural based business providing onsite attractions to tourists that meet the criteria set out by the Department of Agriculture.

(2) “Department” means the Department of Agriculture.

(3) “Directional signs” shall have the meaning provided in paragraph (4) of Code Section 32-6-71.

(c) The Department of Agriculture shall:

(1) Develop criteria and an application process to determine what constitutes an agricultural tourist attraction; and

(2) Maintain a registry of approved agricultural tourist attractions.

(d) Entities wishing to be recognized by the department as an agricultural tourist attraction shall submit an application to the department with a one-time application fee of up to \$250.00.

(e) Upon approval by the department as an agricultural tourist attraction and at the request of the applicant, the department shall, in conjunction with the Department of Transportation, take the appropriate steps to place directional signs along roads in the direct proximity of the agricultural tourist attraction to direct passing traffic to the agricultural tourist attraction.

(f) The department and the Department of Transportation shall create rules and regulations for the purpose of implementing this Code section. (Code 1981, § 50-7-70, enacted by Ga. L. 2008, p. 314, § 1/HB 1088; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in subsection (d).

Code Section 28-9-5, in 2008, Code Section 50-7-70, as enacted by Ga. L. 2008, p. 342, § 1, was redesignated as Code Section 50-7-80.

Code Commission notes. — Pursuant to

ARTICLE 7

GOODS AND PRODUCTS MANUFACTURED IN GEORGIA

Effective date. — This article became effective July 1, 2008.

50-7-80. Legislative findings; creation of “Made in Georgia” program.

(a) The General Assembly finds that:

(1) The State of Georgia substantially benefits from the consumption of goods and products manufactured in Georgia; and

(2) The State of Georgia could further substantially benefit from creating public awareness of the importance of choosing Georgia’s goods and products whenever possible.

(b) The Department of Economic Development shall create and implement a “Made in Georgia” program promoting goods and products manufactured in Georgia. This program shall:

(1) Showcase and promote goods and products manufactured in Georgia;

(2) Inform Georgians of the diverse manufacturing sector within this state; and

(3) Provide educational outreach efforts to bring the science of manufacturing into the classroom and emphasize the significant contributions Georgia companies make to the economy and quality of life in Georgia.

(c) The Department of Economic Development shall create and maintain a website informing the public of Georgia manufacturers and their goods and products. All state governmental entities that maintain websites shall cooperate with the Department of Economic Development to include a link to the website created pursuant to this subsection, provided that the Department of Economic Development determines that such link is appropriate and is in the best interest of the state.

(d) Companies shall be required to manufacture a minimum of 50 percent of its product or good within the boundaries of the state of Georgia to qualify for inclusion to the provisions of this Code section.

(e) The Department of Economic Development may adopt any rules and regulations that it finds necessary to properly implement this Code section. (Code 1981, § 50-7-80, enacted by Ga. L. 2008, p. 342, § 1/SB 359; Ga. L. 2009, p. 763, § 1/SB 117.)

The 2009 amendment, effective July 1, 2009, added subsections (c) and (d) and redesignated former subsection (c) as present subsection (e).

Code Section 28-9-5, in 2008, Code Section 50-7-70, as enacted by Ga. L. 2008, p. 342, § 1, was redesignated as Code Section 50-7-80.

Code Commission notes. — Pursuant to

CHAPTER 8

DEPARTMENT OF COMMUNITY AFFAIRS

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- 50-8-91. Establishment of advisory committees; appointment of members; compensation.
- 50-8-92. Development guides; contents.
- 50-8-93. Review of area plans; designation as official planning agency; responsibility to carry out assigned or delegated planning functions for an area.
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- 50-8-96. Commission to review all applications of governmental entities for state or federal loan or grant; procedure.
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tion to adopt bylaws, rules, and regulations.

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50-8-100. Annual report to General Assembly and to each political subdivision and supporting agency; contents.

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PART 1

OFFICE OF RURAL DEVELOPMENT

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50-8-220. Matching grants for implementation of local plan.

50-8-221. Oversight of local plan by facilities development committee.

50-8-222. Distribution of appropriated funds; ratio of matching funds; submission of consolidated report and accounting.

Cross references. — Community planning and development functions of Office of Planning and Budget, § 45-12-170 et seq.

Administrative rules and regulations. — Georgia Department of Community Affairs,

Office of Coordinated Planning, Official Compilation of the Rules and Regulations of the State of Georgia, T. 110.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1988, p. 38, § 1, effective February 24, 1988, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 50-8-1 through 50-8-12 and was based on Ga. L. 1957, p. 446; Ga. L. 1967, p. 252; Ga. L. 1970, p. 321; Ga. L. 1976, p. 648; Ga. L. 1976, p. 658; Ga. L. 1977, p. 381; Ga. L. 1978, p.

1542; Ga. L. 1978, 1592; Ga. L. 1979, p. 1063; Ga. L. 1980, p. 1316; Ga. L. 1981, Ex. Sess., p. 8 (Code Enactment Act) and Ga. L. 1982, p. 3; Ga. L. 1982, p. 2310; Ga. L. 1983, p. 3; Ga. L. 1984, p. 378; Ga. L. 1984, p. 1177; Ga. L. 1985, p. 149; and Ga. L. 1987, p. 345.

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

50-8-1. Creation and continuation of department.

The Department of Community Affairs is created as a department of the executive branch of state government. The Department of Community Affairs, as it existed immediately prior to July 1, 1989, shall continue to exist as a department of the executive branch of state government in accordance with this article. From and after July 1, 1989, the Department of Community Affairs shall have the duties, responsibilities, functions, power, and authority set forth in this article and otherwise provided by law. (Code 1981, § 50-8-1, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Administrative rules and regulations. — Rules of the department, Official Compilation of the Rules and Regulations of the

State of Georgia, Rules of Georgia Department of Community Affairs, Chapter 110-1-1.

50-8-2. Definitions.

(a) As used in this article, the term:

(1) "Board" means the Board of Community Affairs.

(2) "Commissioner" means the commissioner of community affairs.

(3) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality or any plan by a regional commission covering the center's region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with this article.

(4) "Conflict" means any conflict, dispute, or inconsistency arising:

(A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;

(B) Between or among comprehensive plans for any regions, as proposed, prepared, proposed to be implemented, or implemented;

(C) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;

(D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department pursuant to this article; or

(E) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting developments of regional impact, as defined by the department pursuant to this article.

(5) "Constitution" means the Constitution of the State of Georgia.

(6) "Contract" means any contract, agreement, or other legally binding arrangement.

(7) "Coordinated and comprehensive planning" means planning by counties and municipalities and by regional commissions in accordance with the minimum standards and procedures. Coordinated and comprehensive planning is one of the local government affairs for which the department is authorized to assist in the performance of local government services.

(8) "County" means any county of this state.

(9) "Department" means the Department of Community Affairs.

(10) "Eligible recipient" means any local government, school district, or other government entity which may be eligible to receive funds from the department pursuant to terms for eligibility established by the department or those established by the government or other source which makes the funds available to the department.

(11) "Government" means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.

(12) "Local government" means any county, municipality, or other political subdivision of the state; any regional commission; any public

agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any of their lawful purposes but shall not include school districts.

(13) "Local government affairs" means all matters involving or affecting local governments including, but not limited to, coordinated and comprehensive planning in which the state is or may become empowered or authorized to perform any duties, responsibilities, or functions or to exercise any power or authority.

(14) "Local government services" means the activities performed or authorized to be performed by the department including, but not limited to, its performance of duties, responsibilities, and functions in local government affairs and its exercise of power and authority in local government affairs.

(15) "Minimum standards and procedures" means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department in accordance with this article. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department, in accordance with this article.

(16) "Municipality" means any municipal corporation of the state and any consolidated city-county government of the state.

(17) "Necessary" means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(18) "Qualified local government" means a county or municipality which:

(A) Has a comprehensive plan in conformity with the minimum standards and procedures;

(B) Has made its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures; and

(C) Has not failed to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department, reflects a good faith effort to resolve any conflict.

(19) "Region" means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board in accordance with the provisions of subsection (f) of Code Section 50-8-4.

(20) "Regional commission" means a regional commission established under Article 2 of this chapter.

(21) "Rural area" means any nonurban area in the state as defined in rules and regulations of the department.

(22) "School district" means any school district, independent school system, or other local school system in the state.

(23) "State" means the State of Georgia.

(24) "State agency" means any department, agency, commission, or other institution of the executive branch of the government of the State of Georgia.

(b) A reference to the terms of any contract or writing or to the terms under which any funds are made available shall be construed as a reference to all terms, conditions, covenants, representations, warranties, and other provisions. (Code 1981, § 50-8-2, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, §§ 1, 18, 24/HB 1216.)

The 2008 amendment, effective July 1, 2009, in subsection (a), substituted "regional commission" for "regional development center" in paragraphs (a)(3), (a)(12), (a)(15), (a)(19), and (a)(20); in paragraph (a)(7), substituted "regional commissions"

for "regional development centers" in the first sentence; and, in subparagraph (a)(18)(B), substituted "made its local plan implementation mechanisms consistent with those established in" for "established regulations consistent with".

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*, 259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-3. Purpose of article; duties of department.

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this article is to provide for the department to serve these

essential public interests of the state by developing, promoting, sustaining, and assisting local governments, by developing, promoting, and establishing standards and procedures for coordinated and comprehensive planning, by assisting local governments to participate in an orderly process for coordinated and comprehensive planning, and by assisting local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens. This article shall be liberally construed to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department shall serve as the principal department in the executive branch of state government for local government affairs. The department shall perform the state's role in local government affairs by carrying out the state's duties, responsibilities, and functions in local government affairs and by exercising its power and authority in local government affairs. Without limiting the generality of the purposes served by the department, the department shall:

- (1) Develop, promote, sustain, and assist local governments;
- (2) Provide a liaison between local governments and other governments, including the state government and the federal government;
- (3) Act as the state's principal department for local government affairs and local government services generally and for programs, functions, and studies in local government affairs and local government services and act as the coordinator on the state government level for such programs, studies, and functions provided by the department and for those provided by others;
- (4) Act as the state's principal department for developing, promoting, maintaining, and encouraging coordinated and comprehensive planning;
- (5) Develop, promote, sustain, and assist local governments in the performance of their duties and responsibilities under law to their citizens, including among such duties and responsibilities of local governments coordinated and comprehensive planning; the provision of infrastructure and other public works and improvements; the development, promotion, and retention of trade, commerce, industry, and employment opportunities; the provision of transportation systems; and the promotion of housing supply;
- (6) Serve as the representative of the Governor to local governments and in local government affairs on a regular basis and on special assignments as authorized by the Governor;

(7) Assist the Georgia Housing and Finance Authority for any purpose necessary or incidental in the administration and performance of the Georgia Housing and Finance Authority's duties, powers, responsibilities, and functions as provided in Chapter 26 of this title;

(8) Reserved; and

(9) Assist the OneGeorgia Authority for any purpose necessary or incidental in the administration and performance of the OneGeorgia Authority's duties, powers, responsibilities, and functions as provided in Chapter 34 of this title. (Code 1981, § 50-8-3, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 5; Ga. L. 1998, p. 1386, § 4; Ga. L. 2002, p. 1059, § 1; Ga. L. 2005, p. 306, § 4/SB 125.)

Cross references. — Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "this title" was

substituted for "Title 50" in paragraph (b)(7).

Law reviews. — For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003).

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*, 259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-3.1. Power and duty of department.

(a) The department shall have the power and duty to investigate fraud and abuse in the federal Section 8 Housing Choice Voucher Program administered by the department pursuant to 42 U.S.C. Section 1437, et seq.

(b) When cases of criminal fraud or abuse are discovered or detected, the department shall refer such cases where warranted to the district attorney of the county in which the fraud or abuse occurred for prosecution. Such cases shall be prosecuted as violations of Code Section 16-8-3, relating to theft by deception; Code Section 16-10-20, relating to making false statements or writings; Code Section 16-10-71, relating to false swearing; or any other such criminal provision as the district attorney may deem appropriate under the facts and circumstances of the case.

(c) When a case of fraud or abuse is discovered or detected that is not criminal in nature or when a prosecutor declines to prosecute a case referred by the department under this Code section, the department shall have the authority to settle such case on such terms and conditions as the department finds suitable under the facts and circumstances of the case. In addition, the department shall be authorized to initiate and prosecute civil actions to recoup overpayments or improper payments. The department shall also have the authority to settle such civil cases on such terms and

conditions as the department finds suitable under the facts and circumstances of the cases.

(d)(1) Prior to the filing of an accusation or the return of an indictment alleging fraud or abuse in the federal Section 8 Housing Choice Voucher Program administered by the department, a prosecuting attorney may defer further prosecution of such accusation or indictment and shall have the authority to enter into a consent agreement with the individual in which such individual admits to any overpayment, consents to disqualification for such period of time as is or may hereafter be provided by law or by the rules and regulations of the department, and agrees to repay, as restitution, such overpayment. Such agreement may provide for a lump sum repayment, installment payments, formula reduction of benefits, or any combination thereof. Such agreement shall toll the running of the statute of limitations for such offense for the period of the agreement. Prior to entering into such consent agreement with an individual, the prosecuting attorney or his or her designee shall advise such person that he or she may consult with an attorney prior to signing such consent agreement. If the individual so requests, he or she shall be afforded a reasonable amount of time, not to exceed 15 days, to engage or consult an attorney. A consent agreement entered into in accordance with this subsection shall not constitute a criminal charge.

(2) Any such agreement shall be filed in the criminal docket of the court having jurisdiction over the violation without the necessity of the state filing an accusation or an indictment being returned by a grand jury. The clerk shall enter upon the docket "CONSENT AGREEMENT NOT A CRIMINAL CHARGE."

(3) Upon successful completion of the terms and conditions of the consent agreement, criminal prosecution of the individual for such offense shall be barred; provided, however, that nothing in this paragraph shall prohibit the state from introducing evidence of such offense as a similar transaction in any subsequent prosecution or for the purpose of impeachment. The successful completion of the terms and conditions of the agreement shall not be considered a criminal conviction.

(4) If the individual fails to comply with the terms of such consent agreement, the state may proceed with a criminal prosecution. (Code 1981, § 50-8-3.1, enacted by Ga. L. 2006, p. 694, § 1/HB 1162.)

50-8-4. Board of Community Affairs.

(a) The Board of Community Affairs, as it existed immediately prior to July 1, 1996, shall be abolished effective July 1, 1996, and the Board of Community Affairs, from and after July 1, 1996, is established in accordance with this Code section. The board shall establish policy and direction for the department and shall perform such other functions as may be provided or authorized by law.

(b) Membership on the board shall be determined as follows:

(1) The terms of all members of the Board of Community Affairs serving immediately prior to July 1, 1996, shall expire effective July 1, 1996. The Governor shall appoint the initial members of the board for terms beginning on July 1, 1996, or the date on which the Governor makes the appointment, whichever is later. The terms of initial members of the board shall expire on a staggered basis, as follows: the terms of four of the members shall expire on July 1, 1997, and the terms of three other members shall expire on each July 1 thereafter through July 1, 2001, when the terms of all initial members of the board shall have expired. The Governor shall specify, when he appoints each initial member of the board, the expiration date of that member's term. Upon expiration of the term of each initial member of the board, the Governor shall appoint all successor members of the board for terms of five years. The terms of initial members and subsequent members of the board shall extend beyond the date of expiration and until their successors are appointed and qualified;

(2) The board shall be composed of one member from each United States congressional district in the state and five additional members from the state at large. Members of the board shall include elected officials of either counties or municipalities, individuals who have an interest or expertise in community or economic development, environmental issues, housing development, or finance, or other citizens who in the judgment and discretion of the Governor would enhance the board by their membership;

(3) The term of a member shall expire when it ends or shall terminate earlier immediately upon:

(A) Resignation by a member;

(B) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(C) Any change in local elective office or residence of a member which would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection;

(4) The Governor shall appoint a new member within 60 days after the expiration or termination of a member's term. The Governor may reappoint members of the board to consecutive terms unless such reappointment would cause the composition of the board not to comply with the requirements of paragraph (2) of this subsection; and

(5) Membership on the board does not constitute public office to the extent that a member of the board is precluded from holding other public office.

(c) Officers of the board shall be elected and shall serve as follows:

(1) The officers of the board serving immediately prior to July 1, 1996, shall cease to serve the respective terms for which they were elected, effective July 1, 1996;

(2) Thereafter the members of the board shall elect a chairman, a vice chairman, and a secretary from among the members of the board;

(3) The board shall elect officers at each July meeting or, if there is no July meeting, at the next monthly meeting;

(4) Officers shall serve for a term of one year, beginning with their election and qualification and ending with the election and qualification of their respective successors; and

(5) No person shall hold the same office on the board for more than one term consecutively.

(d) The board shall hold meetings as often as it determines to do so. The board may establish a regular meeting schedule and a procedure for calling special meetings. Unless the board establishes another procedure, the chairman or any five members of the board may call special meetings upon adequate written, personal, telephone, or facsimile notice to members of the board. A majority of the members in office shall constitute a quorum for conducting business, and a majority of those present at any meeting shall be required to approve any action taken by the board. A member must be present at a meeting to count for purposes of determining whether a quorum exists and to vote or otherwise act on matters which come before that meeting. No member may vote or otherwise act through a proxy, designee, or delegate. The board may establish such additional rules and procedures as it deems appropriate for conducting its business from time to time. These rules and procedures may be established in bylaws or in such other form as the board deems appropriate.

(e) Each member of the board shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a board member is in attendance at a meeting of the board or a committee meeting of the board, plus reimbursement for actual transportation expenses incurred while traveling by public carrier or the mileage allowance authorized for state officials and employees for the use of a personal automobile in connection with such attendance. This per diem and reimbursement for transportation expenses shall be paid in lieu of any other per diem, allowance, remuneration, or compensation.

(f)(1) The initial territorial boundaries for the operation of the regional commissions shall be as follows: Region 1 shall be made up of Bartow, Catoosa, Chattooga, Dade, Fannin, Floyd, Gilmer, Gordon, Haralson, Murray, Paulding, Pickens, Polk, Walker, and Whitfield; Region 2 shall be made up of Banks, Dawson, Forsyth, Franklin, Habersham, Hall, Hart,

Lumpkin, Rabun, Stephens, Towns, Union, and White; Region 3 shall be made up of Cherokee, Clayton, Cobb, DeKalb, Douglas, Fayette, Fulton, Gwinnett, Henry, and Rockdale; Region 4 shall be made up of Butts, Carroll, Coweta, Heard, Lamar, Meriwether, Pike, Spalding, Troup, and Upson; Region 5 shall be made up of Barrow, Clarke, Elbert, Greene, Jackson, Jasper, Madison, Morgan, Newton, Oconee, Oglethorpe, and Walton; Region 6 shall be made up of Baldwin, Bibb, Crawford, Houston, Jones, Monroe, Peach, Pulaski, Putnam, Twiggs, and Wilkinson; Region 7 shall be made up of Burke, Columbia, Glascock, Hancock, Jefferson, Jenkins, Lincoln, McDuffie, Richmond, Taliaferro, Warren, Washington, and Wilkes; Region 8 shall be made up of Chattahoochee, Clay, Crisp, Dooly, Harris, Macon, Marion, Muscogee, Quitman, Randolph, Schley, Stewart, Sumter, Talbot, Taylor, and Webster; Region 9 shall be made up of Appling, Bleckley, Candler, Dodge, Emanuel, Evans, Jeff Davis, Johnson, Laurens, Montgomery, Tattnall, Telfair, Toombs, Treutlen, Wayne, Wheeler, and Wilcox; Region 10 shall be made up of Baker, Calhoun, Colquitt, Decatur, Dougherty, Early, Grady, Lee, Miller, Mitchell, Seminole, Terrell, Thomas, and Worth; Region 11 shall be made up of Atkinson, Bacon, Ben Hill, Berrien, Brantley, Brooks, Charlton, Clinch, Coffee, Cook, Echols, Irwin, Lanier, Lowndes, Pierce, Tift, Turner, and Ware; and Region 12 shall be made up of Bryan, Bulloch, Camden, Chatham, Effingham, Glynn, Liberty, Long, McIntosh, and Screven. The board for each regional commission shall ratify the boundaries provided for in this paragraph. If a regional commission fails to ratify such boundaries, such commission shall continue to operate under the existing boundaries for such commission prior to June 30, 2009. The provisions of Article 2 of this chapter shall apply to a regional commission failing to ratify the boundaries provided for in this Code section; provided, however, that such commission shall not be eligible to receive funding pursuant to Code Section 50-8-33.

(2) Notwithstanding the territorial boundaries established pursuant to paragraph (1) of this subsection, the board shall determine and establish, from time to time, the territorial boundaries for the region of operation by each regional commission as well as the total number of the regions; provided, however, that any action of the board altering the boundaries of a regional commission or changing the total number of the regions shall not be effective until approved by the General Assembly at the next regular session following such action by the board by means of the adoption of a joint resolution ratifying such action. Each county shall be wholly within the region of one regional commission, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the board shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional commission.

(g) In addition to ratification by resolution, the General Assembly may ratify regional commission boundary changes by Act. (Code 1981, § 50-8-4, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 6; Ga. L. 1999, p. 789, § 4; Ga. L. 2008, p. 181, § 2/HB 1216.)

The 2008 amendment, effective July 1, 2009, in subsection (f), designated the existing provisions as paragraph (f)(2), and added paragraph (f)(1); in paragraph (f)(2), in the first sentence, substituted “Notwithstanding the territorial boundaries established pursuant to paragraph (1) of this subsection, the board” for “The board” near the beginning; substituted “commission as well as the total number of the regions; provided, however, that any action of the board altering the boundaries of a regional commission or changing the total number of the regions” for “development center; provided, however, any action of the board altering the boundaries of a regional development center” near the middle; deleted the former second sentence, which read: “The boundaries of each region shall be established initially so that, for the period through June 30, 1990, each region will cover the same territorial area as covered by the regional development center’s predeces-

sor area planning and development commission in effect on June 30, 1989.”; in the present second sentence, substituted “regional commission” for “regional development center” twice; in subsection (g), substituted “regional commission” for “regional development center”, and deleted “; and the particular changes adopted by the Board of Community Affairs on January 13, 1999, and February 10, 1999, and affecting Johnson and Emanuel counties are ratified to become effective July 1, 1999” from the end.

Cross references. — Per diem expense allowance allowed to members of General Assembly, § 45-7-4(a)(22). Legal mileage allowance, § 50-19-7.

Editor’s notes. — Ga. L. 2008, p. 181, § 26, provided that the 2008 amendment of this Code section became effective only upon appropriation of funds. Funds were appropriated at the 2009 session of the General Assembly.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — A county or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan

planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 63, 65, 88, 105, 108 et seq.

C.J.S. — 81A C.J.S., States, §§ 169, 170.

50-8-5. Commissioner; powers.

(a) The office of the commissioner of community affairs, as it existed immediately prior to July 1, 1989, shall continue to exist in accordance with this article. The commissioner shall be the department head, whose duties shall include serving as the department’s chief executive officer and administrative head. The commissioner serving immediately prior to July 1, 1989, shall continue to serve as commissioner at the pleasure of the board.

Thereafter the commissioner shall be appointed by the board and shall serve at the pleasure of the board. The board shall establish the compensation for the commissioner limited by any amount that may be specified in the appropriations Act.

(b) The commissioner shall have and may exercise the following power and authority:

(1) The power and authority to take or cause to be taken any or all action necessary to perform any local government services or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(2) The power and authority to make, promulgate, enforce, or otherwise require compliance with any and all rules, regulations, procedures, or directives necessary to perform any local government services, to carry into effect the minimum standards and procedures for coordinated and comprehensive planning, or otherwise necessary to perform any duties, responsibilities, or functions which the department is authorized by law to perform or to exercise any power or authority which the department is authorized by law to exercise;

(3) The power and authority to certify, from time to time, municipalities and counties as qualified local governments, which certification shall not be unreasonably withheld; and

(4) The power and authority to assist the board in the performance of its duties, responsibilities, and functions and the exercise of its power and authority. (Code 1981, § 50-8-5, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Cross references. — Duties of commissioner with regard to factory-built housing, § 8-2-110 et seq.

50-8-6. Divisions, sections, and offices of department.

The department shall be divided into such divisions, sections, or offices as may be necessary from time to time. All divisions, sections, or offices in existence immediately prior to July 1, 1989, shall continue to exist in accordance with this article. Thereafter, divisions, sections, and offices shall be abolished, reorganized, or established from time to time by the commissioner and as otherwise specified by law. The commissioner shall appoint such directors, deputies, and assistants as may be necessary to manage such divisions, sections, and offices. Such positions shall be in the unclassified service of the State Personnel Administration. (Code 1981, § 50-8-6, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "State Merit System of Personnel Administration" at the end of the last sentence of this Code section.

50-8-7. Planning and technical assistance activities; gathering and distribution of information and studies.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such planning and technical assistance activities as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) The department may provide technical assistance to local governments. This assistance may be directed to any and all activities of local government including, but not limited to, preparation and implementation of a comprehensive plan, community and economic development, and governmental administration, finance, management, and operations;

(2) The department may provide planning assistance to local governments. This assistance may include assistance with respect to preparation or implementation of a local government's comprehensive plan and participation in the process for coordinated and comprehensive planning. This assistance may also include long-range planning relevant to one or more local governments to identify the needs of such local governments or planning with respect to downtown development and the redevelopment and revitalization of downtown areas and central business districts;

(3) The department may assist local governments in planning for the consequences or other results of decisions or actions by any government which have an impact on local governments or on any of their citizens;

(4) The department may provide planning assistance to any local government or any state agency or state authority in connection with housing and dwelling places for citizens of the state. This assistance may include planning with respect to the availability of single-family, multi-family, and other types of housing units, the anticipated changes in such availability, the potential occupants for such housing, and the anticipated changes in such potential occupants. This assistance may also include planning with respect to homeless persons and the shelter needs of homeless persons; and

(5) The department's planning and technical assistance activities may include planning, technical assistance, analysis, recommendations for policies or action, and related activities and services with respect to any lawful purpose or activity of a local government.

(b) The department shall undertake and carry out, and shall coordinate with other state agencies and local governments in undertaking and carrying out, such gathering of information, such distribution of information, and such studies and recommendations as the board or the commissioner may deem necessary for performing local government services and as may be specified by law. Such coordinating, gathering, and distribution of information and studies may include, but shall not be limited to, the following:

(1) The department shall coordinate and participate in compiling, and other state agencies and local governments shall participate in compiling, a Georgia data base and network to serve as a comprehensive source of information available, in an accessible form, to local governments and state agencies. The Georgia data base and network shall collect, analyze, and disseminate information with respect to local governments, regional commissions, and state agencies. The Georgia data base and network shall include information obtained or available from other governments and information developed by the department. To maintain the Georgia data base and network, the department shall make, and shall coordinate with other state agencies and local governments in making, comprehensive studies, investigations, and surveys of the physical, social, economic, governmental, demographic, and other conditions of the state and of local governments and of such other aspects of the state as may be necessary to serve the purposes of the department. The department shall make available the Georgia data base and network, or provide access to the Georgia data base and network, to other state agencies, local governments, members of the General Assembly, and residents of the state;

(2) The department may assist the Governor, the General Assembly, any committees of the General Assembly, any state department, any state agency, any state authority, or any local government with studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information prepared, developed, or obtained by the department;

(2.1) The department may assist any local government or local authority owning or operating a facility for convention and trade show purposes or any other similar or related purposes in identifying and promoting regional economic assistance projects within their respective jurisdictions, and such facility, if the subject of a reciprocal use agreement, shall be an adjacent facility satisfying the criteria of paragraph (1) of subsection (c) of Code Section 50-8-191;

(3) The department may undertake studies, investigations, and surveys to identify potential physical, social, economic, governmental, demographic, or other problems and opportunities in the urban, suburban, and rural areas of the state and to assist local governments in preparing to avoid the consequences of such problems or to take advantage of such opportunities; and

(4) The department may write, draft, prepare, or publish any studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information with respect to local or regional government affairs. The department may distribute or otherwise disseminate any such studies, surveys, investigations, maps, reports, plans, recommendations, advice, and information to any government, any state authority or state agency, or any private entity.

(c) The duties, responsibilities, and functions of the department and the power and authority of the department described in this Code section are cumulative with, and in addition to, all other duties, responsibilities, and functions and power and authority of the department and are not intended to, and shall not be construed to, conflict with any other duties, responsibilities, or functions or any other power or authority of the department, including, but not limited to, the duties, responsibilities, and functions and the power and authority described in Code Section 50-8-7.1. (Code 1981, § 50-8-7, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 3/HB 1216; Ga. L. 2008, p. 363, § 2/HB 1280.)

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, added paragraph (b)(2.1). The second 2008 amendment, effective July 1, 2009, in paragraph (b)(1), substituted “regional commissions” for “regional development centers” in the second sentence; deleted former paragraph (b)(2), which read: “The department shall maintain a strategic rural economic development plan in cooperation with the regional development centers, the university system of the state, other state agencies and departments, and local governments. The plan shall include, without being limited to, identifying industries for which the rural areas of the state have a comparative advantage, exploring resources for venture capital for the rural areas of the state, and providing state financial assistance to support local initiatives for rural economic development in rural areas;” redesignated former para-

graphs (b)(3) through (b)(5) as present paragraphs (b)(2) through (b)(4), respectively; and, in paragraph (b)(4), inserted “or regional” in the first sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a semicolon was substituted for a period at the end of paragraph (b)(2.1).

Administrative rules and regulations. — Developments of regional impact, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Community Development Block Grant Program, Chapter 110-12-3.

Mediation of interjurisdictional conflicts, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-5.

OPINIONS OF THE ATTORNEY GENERAL

Use of money from emergency fund to prepare planning study. — The Planning and Programming Bureau (now Department of Community Affairs) can use money from the Governor’s emergency fund to prepare a municipal planning study itself or, in the alternative, contract with a third party, such

as a planning consultant, for preparation of the study by the latter. 1969 Op. Att’y Gen. No. 69-312.

Grant for construction of local government facilities. — The Department of Community Affairs is without legal authority to make a grant of state funds to a city or

county for the construction of a civic center or carpet exposition facility. 1987 Op. Att'y Gen. No. 87-15.

RESEARCH REFERENCES

ALR. — Constitutionality of levee and flood control acts, 70 ALR 1274. mental subdivision in connection with flood-protection measures, 5 ALR2d 57.
Liability of municipality or other govern-

50-8-7.1. General powers and duties.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department, utilizing the comprehensive plans of qualified local governments, shall undertake and carry out such activities as may be necessary to assist the Governor in encouraging, coordinating, developing, and implementing coordinated and comprehensive planning. Such activities may include, but shall not be limited to, the following:

(1) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Governor in coordinated and comprehensive planning on the state level and throughout the state, including, but not limited to, assistance in the development of a comprehensive plan for the state;

(2) The department, utilizing the comprehensive plans of regional commissions and qualified local governments, shall assist the Governor in defining the state's long-term goals, objectives, and priorities and implementing those goals, objectives, and priorities through coordinated and comprehensive planning;

(3) The department shall examine and analyze plans of state agencies, comprehensive plans of regional commissions, and comprehensive plans of municipalities and counties, undertaken as part of the coordinated and comprehensive planning process, and advise the Governor with respect to those plans; and

(4) The department shall serve as policy liaison for the Governor, with respect to coordinated and comprehensive planning, with and among state agencies and local governments.

(b) The department shall establish in accordance with the provisions of Code Section 50-8-7.2 minimum standards and procedures for coordinated and comprehensive planning, including standards and procedures for preparation of plans, for implementation of plans, and for participation in the coordinated and comprehensive planning process. The department shall undertake and carry out such activities as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) As part of such minimum standards and procedures, the department shall establish minimum elements which shall be addressed and included in comprehensive plans of local governments which are prepared as part of the coordinated and comprehensive planning process. These elements shall include, but shall not be limited to, housing, human services, natural resources, the environment, vital areas, historic and cultural resources, infrastructure, land use other than zoning, recreation, transportation, and economic development;

(2) The department shall establish minimum standards and procedures which shall be used by local governments in developing, preparing, and implementing their comprehensive plans. The department shall incorporate the minimum standards and procedures with respect to natural resources, the environment, and vital areas of the state established and administered by the Department of Natural Resources pursuant to Code Section 12-2-8. In establishing such minimum standards and procedures, the department shall be authorized to differentiate among local governments and among regions based upon factors which the department determines merit differentiation, such as total population, density of population, geographic features, the size of tax base, the type and character of services furnished by local governments, the size of budget, and other factors;

(3) The department shall develop planning procedures with respect to regionally important resources, for planning with respect to developments of regional impact, and for encouraging interjurisdictional cooperation among local governments. The department shall determine, in its judgment and for each region, what shall constitute developments of regional impact. Such determinations by the department shall be made for each region after receiving any necessary information from the regional commission for the region, from local governments within the region, and from others within the region. The department's determinations shall be publicly promulgated, using such means as the commissioner may determine, so that all local governments within a region will receive notice of the department's determinations affecting that region; and

(4) The department shall establish and shall promulgate procedures for obtaining input from, and participation by, local governments and the public in establishing, amending, and updating from time to time the minimum standards and procedures.

(c) The department shall undertake and carry out such activities as the board or the commissioner may deem necessary for supervising regional commissions and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department shall recommend to the board from time to time the boundaries for the regions for each of the regional commissions; and

(2) The department shall review and comment on comprehensive plans prepared by, and coordinated and comprehensive planning activities undertaken by or under the direction of, regional commissions.

(d) The department shall undertake and carry out such activities as may be necessary to mediate, or otherwise assist in resolving, conflicts. Such activities may include, but shall not be limited to, the following:

(1) The department may establish such procedures and guidelines for mediation or other forms of resolving conflicts as the commissioner may deem necessary. The procedures and guidelines shall specify the times within which steps in the mediation or other form of conflict resolution shall take place and shall provide that such times shall not exceed, in the aggregate, 90 days from the date on which mediation or other conflict resolution begins. The department shall promulgate and make public all such procedures and guidelines;

(2) The department may act to mediate or otherwise assist in resolving conflicts upon written request from any regional commission or local government or may act, without any such request, on its own initiative;

(3) The department may establish rules and procedures which require that local governments submit for review any proposed action which would, based upon guidelines which the department may establish, affect regionally important resources or further any development of regional impact. Any such proposed action by a local government (other than a regional commission) shall be submitted for review to the local government's regional commission. Any such proposed action by a regional commission shall be submitted for review to the department. Review shall be in accordance with rules and procedures established by the department. The review shall result in a public finding by the regional commission or the department, as the case may be, that the action will be in the best interest of the region and state or that it will not be in the best interest of the region and state;

(4) Any conflict which remains after review pursuant to the procedures established under paragraph (3) of this subsection shall be submitted to mediation or such other form of resolving conflicts as the commissioner may deem necessary; and

(5) The department may decline to certify a local government as a qualified local government or may take or recommend action which would reduce state or other funding for a regional commission if such local government or regional commission, as the case may be, is a party to a conflict but fails to participate in the department's mediation or other means of resolving conflicts in a manner which, in the judgment of the department and a majority of the Board of Community Affairs, reflects a good faith effort to resolve the conflict. (Code 1981, § 50-8-7.1, enacted by Ga. L. 1989, p. 1317, § 2.1; Ga. L. 2008, p. 181, § 4/HB 1216.)

The 2008 amendment. — effective July 1, 2009, substituted “regional commission” and “regional commissions” for “regional development center” and “regional development centers” throughout this Code section; in paragraphs (a)(1) and (a)(2), inserted “regional commissions and” near the beginning; in paragraph (b)(1), inserted “and cultural” in the second sentence; and, in paragraph (c)(3), inserted “region and” twice in the last sentence.

Cross references. — Amendment and revision of code provisions, § 8-2-23. Duty of Department of Community Affairs to prepare annual report on local government finances, § 36-81-8.

Editor’s notes. — By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1989.

By resolution (Ga. L. 1990, p. 945), the General Assembly ratified the initial minimum standards and procedures for coordinated and comprehensive planning adopted by the Department and Board of Community Affairs on January 10, 1990.

JUDICIAL DECISIONS

Cited in *Kingsley v. Fla. Rock Indus.*, 259 Ga. App. 207, 575 S.E.2d 921 (2002).

50-8-7.2. Ratification of department standards and procedures by General Assembly.

The initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be submitted by the department to the General Assembly at the next regular session following July 1, 1989, and shall become effective only when ratified by joint resolution of the General Assembly. The power of the department to promulgate such initial minimum standards and procedures shall be deemed to be dependent upon such ratification. Any subsequent amendments or additions to the initial minimum standards and procedures promulgated by the department pursuant to Code Section 50-8-7.1 shall be promulgated in accordance with and subject to the provisions of Chapter 13 of this title, the “Georgia Administrative Procedure Act.” (Code 1981, § 50-8-7.2, enacted by Ga. L. 1989, p. 1317, § 2.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “July 1, 1989,” was substituted for “the effective date of this Act” in the middle of the first sentence.

Editor’s notes. — By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the

state adopted by the Department and Board of Natural Resources on December 6, 1990.

By resolution (Ga. L. 1990, p. 206), the General Assembly ratified the supplemental funding formula for regional development centers adopted by the Department and Board of Community Affairs on February 14, 1990.

50-8-7.3. Solid waste management education program; establishment of Georgia Clean and Beautiful Advisory Committee and Interagency Council on Solid Waste Management.

The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall establish a solid waste management education program in the state. Such program shall include, but not be limited to, the following:

(1)(A) The establishment of a Georgia Clean and Beautiful Advisory Committee that shall assist the department in developing, coordinating, and implementing efforts to educate the citizens of the state on methods of solid waste management.

(B) The advisory committee shall consist of no more than 30 members, who shall be appointed by the Governor and be representative of state and local government; business and industry; community, environmental, and civic organizations; the news media; educators; and other areas as the Governor may deem appropriate.

(C) Members of the advisory committee are authorized to receive reimbursement for actual expenses incurred in the performance of their duties from such funds as may be appropriated for such purposes and within such limits as may be established by the department; and

(2)(A) The establishment of an Interagency Council on Solid Waste Management that shall be chaired by the commissioner and shall consist of representatives from departments and agencies within state government that have responsibilities or activities relating to solid waste.

(B) The council shall serve as a forum for gathering and sharing information on solid waste management as well as for developing and initiating activities within state government relating to solid waste management and shall provide advice and assistance to the Georgia Clean and Beautiful Advisory Committee and its educational programs. (Code 1981, § 50-8-7.3, enacted by Ga. L. 1990, p. 412, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection (a) designation was deleted from the beginning of the section since there is no subsection (b).

50-8-8. Grants, loans, and other disbursements of funds; state community development program.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall make grants or loans to eligible recipients or

qualified local governments, which grants or loans are specified by amount, recipient, and purpose in an appropriation to the department; provided, however, that the department shall not make such a grant to any county or independent board of education for the construction or operation of athletic facilities during the fiscal year following the receipt by the department of certification by the State Board of Education that the county or independent board of education is not in compliance with the requirements of Code Section 20-2-315. The department shall also grant to any school district the proceeds of any general obligation debt for educational facilities for which the department is named user agency and the school district is named recipient in an appropriation authorizing the debt. The department may make grants or loans to eligible recipients or qualified local governments from appropriations made to the department generally for grant or loan purposes, without appropriations language specifying amounts, recipients, and purposes. The department:

(1) Shall disburse such grants or loans on the basis of criteria which include consideration of matters such as legislative intent; local, regional, or state-wide impact or benefit; public exigencies or emergencies; enhancement of community and economic development opportunities; improvement or expansion of government operations or services; community health, safety, and economic well-being; coordinated and comprehensive planning in accordance with minimum standards and procedures; and any other similar criteria that may from time to time be established by the department; and

(2) May condition the award of any such grants or loans to a county or municipality upon the county or municipality, as the case may be, being a qualified local government.

(b) The department shall direct the distribution of any appropriations or other funds available for coordinated and comprehensive planning in accordance with the Act of the General Assembly providing for such appropriations. No grant or loan by the department to any eligible recipient or qualified local government shall adversely affect any grant, loan, or service to the eligible recipient or qualified local government by any other unit or instrumentality of state government. Without limiting the foregoing, the Department of Education, the Department of Transportation, the Georgia Environmental Facilities Authority, and the director of the Office of Treasury and Fiscal Services shall not diminish or fail to award any funds, loans, or service to any recipient under any state or federal program in whole or in part on account of a grant or loan by the department. Grants or loans by the department are and shall be deemed to be of a special nature and in addition to all such other grants, loans, or awards. The following provisions shall apply to making such funds available to eligible recipients or qualified local governments:

(1) The department may make available funds by grant or loan to an eligible recipient or qualified local government, by direct payments on

behalf of an eligible recipient or qualified local government, or by any other lawful means. In the event the department determines that, in its judgment, a regional commission has failed to comply with its duties as provided by law or with the terms of a contract between such regional commission and a local government, the department shall be authorized to make payments, which it otherwise would have made to the regional commission, directly to the local government or as the department otherwise determines in order to carry out the duties of the regional commission under the law or such contract;

(2) The department may accept, use, and disburse gifts and grants made to it on terms consistent with its legal powers, from any public or private source;

(3) The department shall specify the terms under which it makes any funds available to an eligible recipient or qualified local government. The terms shall be those established or otherwise required by the government or other source which makes the funds available to the department. If such government or other source does not establish or otherwise require any such terms, the department may establish the terms;

(4) The department shall set forth in writing the terms under which the department makes funds available to a qualified local government or eligible recipient. The terms may be set forth in a contract. The department may execute any such contract on behalf of the state, and any eligible recipient which is a qualified local government, school district, state agency, or state authority is authorized to execute any such contract. Any such writing or contract may incorporate other terms or laws by reference to such terms or laws;

(5) The department shall manage and administer all funds made available pursuant to this Code section; and

(6) The department may make funds available for any purpose for which the eligible recipient or qualified local government may lawfully use such funds. Unless precluded by general law, these purposes may include, but shall not be limited to, assisting in or furthering any of the purposes, duties, responsibilities, functions, power, or authority of local governments or the department. These purposes may also include, but shall not be limited to, establishing, developing, constructing, improving, maintaining, restoring, or protecting local government projects or purposes of any nature, such as:

- (A) Construction projects;
- (B) Capital outlay projects;
- (C) Infrastructure projects;
- (D) Planning services;

(E) Technical assistance;

(F) Coordinated and comprehensive planning;

(G) Marketing and promotional projects to encourage tourism and to develop, promote, and retain trade, commerce, industry, and employment opportunities, agriculture, and agribusiness;

(H) Purchase or lease of equipment;

(I) Operating expenses;

(J) Housing projects;

(K) Any project for the purposes of acquiring, constructing, equipping, maintaining, and operating regional commerce and trade center facilities suitable for housing conventions and trade shows as well as cultural, political, musical, educational, athletic, and other events, in order to provide for the establishment, development, and maintenance of commerce and trade;

(L) Any project or purpose described in or permitted under any appropriations to the department;

(M) Any project or purpose described in or permitted under any grant made to, or to be made by or through, the department;

(N) Any project or purpose provided for in the federal Housing and Community Development Act of 1974, as amended, or any successor to the Housing and Community Development Act of 1974;

(O) Any project or purpose provided for in the federal Public Works and Economic Development Act of 1965, as amended, or any successor to the Public Works and Economic Development Act of 1965;

(P) Any project or purpose authorized by federal or state law; or

(Q) Any other project or purpose consistent with the duties, responsibilities, functions, power, and authority of the department.

(c) The department may apply for, receive, administer, and use any grant, other financial assistance, or other funds made available to the department from any government or other source for furthering the purposes of the department. The department's actions in this respect may be taken for itself or on behalf of qualified local governments or other eligible recipients. The department's power and authority under this subsection includes, but shall not be limited to, the following:

(1) The department may apply on behalf of qualified local governments or other eligible recipients for receipt of state appropriated funds from the Governor's emergency fund as provided by Code Section 45-12-77. If such an application is approved, or if state appropriated funds from the Governor's emergency fund as provided by Code Section

45-12-77 are otherwise made available to the department, the department may be authorized by the Governor to disburse such emergency funds to the local government or other eligible recipient; and

(2) The department may accept on behalf of qualified local governments or other eligible recipients funds provided to the department by an executive order of the Governor and may disburse such funds to such local governments or other eligible recipients. The eligible recipient and the terms under which such funds are made available for use by the eligible recipient shall be specified in the executive order and shall be made a part of any writing or contract between the department and the eligible recipient.

(d) The department is authorized and shall have all powers necessary to participate in federal programs and to comply with laws relating thereto.

(e) The governing authority of any county, municipality, or combination thereof may expend public funds received from the department to perform any public service or public function as authorized under the terms specified by the department or, in the absence of any such terms, as otherwise authorized by the Constitution or by law or to perform any other service or function as authorized by the Constitution.

(f) The department shall make available to any state agency or authority assigned to the department for administrative purposes all funds made available to the department for the use of any such state authority or agency. The department may make available funds to such state agencies or authorities for any lawful purposes of any such state agencies or authorities.

(g) The power and authority of the department under this Code section to make available to local governments or any other eligible recipient any funds shall be limited by the Constitution and laws of the state, and as specified in this Code section, but shall not otherwise be limited.

(h) Pursuant to Article VII, Section III, Paragraph III of the Constitution and as otherwise may be authorized, all grants and other disbursements of funds made by the department or from the emergency fund through the department prior to July 1, 1989, are approved, ratified, and confirmed.

(i) There is established within the department a state community development program. Funds may be appropriated to such a program by line item reference in any appropriations Act. Using such funds as may be appropriated the department may provide assistance to eligible local governments that are qualified to participate in the state administered federal community development block grant program, in the form of grants, loans, loan guarantees, or any combination thereof. Nothing contained in this subsection shall be construed to limit any other powers of the department. (Code 1981, § 50-8-8, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97,

§ 50; Ga. L. 2000, p. 1129, § 3; Ga. L. 2000, p. 1423, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” four times in paragraph (b)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “Code Section 20-2-315” was substituted for “Code Section 20-2-314” at the end of the second sentence in the introductory paragraph of subsection (a).

Editor’s notes. — Ga. L. 2000, p. 1129, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Equity in Sports Act.’”

U.S. Code. — The federal Housing and Community Development Act of 1974, referred to in subparagraph (b)(6)(N), appears mainly as 42 U.S.C. §§ 1437 through

1490f. The federal Public Works and Economic Development Act of 1965, referred to in subparagraph (b)(6)(O), appears as 42 U.S.C. §§ 3121 through 3245.

Administrative rules and regulations. — Local development fund grants, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-6-1.

Financial assistance grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-13-1.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 168 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1967, pp. 252 and 258, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Use of funds by planning and development commissioners. — The Department of Community Development (now Department of Community Affairs) is not legally responsible for the manner in which the area planning and development commissions utilize funds made available to the commissions by the General Assembly through the department; those commissions are basically self-governing entities, not state agencies or political subdivisions. 1974 Op. Att’y Gen. No. 74-73 (decided under Ga. L. 1967, pp. 252 and 258).

Independent determination of grant eligibility. — A state agency making grants to local governments must independently exercise the agency’s statutory discretion in determining eligible applicants and may not limit eligibility solely on the basis of an administrative document of the General Assembly. 1993 Op. Att’y Gen. No. 93-19.

Eligibility of area planning and development commissions. — Department of Community Affairs has responsibility for deter-

mining eligibility of area planning and development commissions for funds. 1981 Op. Att’y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

Identification of recipients. — Since authority under this former section is merely to “make available such funds as may be appropriated by the General Assembly,” the Department of Community Affairs should not have to identify any particular recipients. The legislature will itself identify recipients. 1981 Op. Att’y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

Housing assistance programs. — Where the funds are not sought to create a planning service or to provide technical assistance, information, or advice in accordance with the purposes of Title II of the Housing and Community Development Act of 1974 (42 U.S.C. § 1437 et seq.), the department does not have the requisite statutory authority to apply for, receive, or administer federal grants under the section 8 housing assistance payments program for existing units established pursuant to such Act. 1976 Op. Att’y Gen. No. 76-15 (decided under Ga. L. 1967, pp. 252 and 258).

No discretion in disbursement of funds made available. — The Department of Community Affairs has responsibility to disburse funds to area planning and development

commissions. However, this disbursement cannot be contingent on the department's views of either the use made of moneys or adequacy of record-keeping procedures. In

short, the department has no discretion in that disbursement. 1981 Op. Att'y Gen. No. 81-15 (decided under Ga. L. 1967, pp. 252 and 258).

50-8-9. Contracts with public and private entities or individuals.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall have the power to enter into contracts with local governments, school districts, state agencies, state authorities, and other public and private entities or individuals for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the department or exercising the power and authority of the department. No such contract shall constitute a donation or gratuity or the forgiveness of any debt or obligation owing to the public. No such contract shall constitute or be intended to constitute security for bonds or other obligations issued by any public agency, public corporation, or authority. No such contract shall constitute a pledge or loan of the credit of the state to any individual, company, corporation, or association, and the state, through the department, shall not become a joint owner or stockholder in or with any individual, company, association, or corporation.

(b) The power and authority of the department under this Code section to enter into contracts shall be limited to entering into contracts permitted under the Constitution and laws of the state and as specified in this Code section but shall not otherwise be limited.

(c) The department shall have the power to enter into contracts with the Georgia Housing and Finance Authority for any purpose necessary or incidental in assisting the Georgia Housing and Finance Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the Georgia Housing and Finance Authority and not on behalf of the department; and provided, further, such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the Georgia Housing and Finance Authority, including the provision for joint or complementary services, within the scope of their respective powers.

(d) Reserved.

(e) The department shall have the power to enter into contracts with the OneGeorgia Authority for any purpose necessary or incidental in assisting the OneGeorgia Authority in carrying out or performing its duties, responsibilities, and functions; provided, however, that all such assistance shall be performed on behalf of and pursuant to the lawful purposes of the OneGeorgia Authority and not on behalf of the department; and provided,

further, that such assistance shall not include the authorization of the issuance of any bonds or other indebtedness of the authority. The department may undertake joint or complementary programs with the OneGeorgia Authority, including the provision for joint or complementary services, within the scope of their respective powers. (Code 1981, § 50-8-9, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1; Ga. L. 1996, p. 872, § 7; Ga. L. 1997, p. 143, § 50; Ga. L. 1998, p. 1386, § 5; Ga. L. 2002, p. 1059, § 2; Ga. L. 2005, p. 306, § 5/SB 125.)

Cross references. — Parks, Historic Areas, Memorials, and Recreation, Ch. 3, T. 12.

50-8-10. Coordination of policies, programs, and actions of governments; research center on intergovernmental relations; leadership and community development programs.

(a) The department shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. The department shall undertake and carry out such activities as may be necessary to coordinate policies, programs, and actions of governments in local government affairs and as may be specified by law. Such activities may include, but shall not be limited to, the following:

(1) The department may take such action as the commissioner may deem necessary, to the extent feasible and practicable as determined by the commissioner, to make the programs and policies including, but not limited to, comprehensive plans of all levels of government consistent and to minimize duplicated or inconsistent programs and policies including, but not limited to, comprehensive plans within the state government and among local governments;

(2) The department may review, on a continuous basis, the programs and policies including, but not limited to, comprehensive plans of all governments acting within the state to determine their consistency with long-range programs and policies of the state; and

(3) The department may consult with, meet with, confer with, and cooperate with the executive or legislative authorities of other states, with representatives of municipalities and counties of other states, with other representatives of governments, with representatives of private entities, and with others for the purpose of furthering the coordination of programs and policies affecting local government affairs within this state.

(b) The department shall serve as the state's clearing-house and research center on intergovernmental relations, including relationships among federal, state, and local levels of government and, to this end, the department shall:

(1) Monitor, review, analyze, and communicate with and to others with respect to actions and developments in the United States Congress, in the

federal agencies, and in other states which affect local governments or which may affect relations between the state and any local governments; and

(2) Coordinate its activities with the office of the Governor, other state agencies and authorities, and the state's members of the United States Congress.

(c) The department may provide, supervise, or coordinate leadership and community development programs for local governments and other programs with respect to local government affairs. The department may develop pilot programs or projects designed to address the problems and needs of local government. (Code 1981, § 50-8-10, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “and,” was substituted for “, and” following “levels of government” near the end of the introductory language of subsection (b).

50-8-11. Power to take action for furtherance of purposes of department; disposition of revenues.

(a) The department shall have the duty, responsibility, power, and authority to take all action necessary to further the purposes of the department, without regard for whether any such duty, responsibility, power, or authority is specifically mentioned in this article or otherwise specifically granted by law. Without limiting the general nature of this Code section:

(1) The department shall have all duties, responsibilities, power, and authority granted or specified under or pursuant to any other laws of the state and any executive orders issued by the Governor prior to July 1, 1989. To the extent permitted by law, the Governor may, by executive order issued on or after July 1, 1989, authorize the department to take specific action in furtherance of the purposes of the department; and in that event, the department shall take such action;

(2) The department shall promote and encourage assistance from private entities and individuals in carrying out and performing local government services;

(3) The department shall assist local governments in developing, promoting, and retaining trade, industry, commerce, and employment opportunities;

(4) The department may define, identify, and establish criteria or requirements for local governments or others to participate with or to use any local government services; and

(5) The department may receive, use, and spend money received from the state for any of the purposes of the department.

(b) Revenues for all fees and charges imposed or otherwise charged by the department for local government services shall be paid into the general fund of the state treasury, except that charges intended to reimburse expenses incurred by the department shall be used to reimburse the department for such expenses. (Code 1981, § 50-8-11, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

50-8-12. No limitations by article on county or municipal zoning power.

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning. (Code 1981, § 50-8-12, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1989, p. 1317, § 2.1.)

RESEARCH REFERENCES

ALR. — Validity and construction of zoning laws setting minimum requirements for floorspace or cubic footage inside residence, 87 ALR4th 294.

50-8-13. Authorities and agencies assigned to department.

(a) Authorities or agencies may be assigned to the department for administrative purposes in accordance with Code Section 50-4-3. The following authorities are assigned to the department in accordance with such Code section:

- (1) The Georgia Environmental Facilities Authority; and
- (2) The Georgia Housing and Finance Authority.

(b) The department may induce, by payment of state funds or other consideration, any agency or authority assigned to the department for administrative purposes to perform any local government services and to perform its own statutory function. (Code 1981, § 50-8-13, enacted by Ga. L. 1988, p. 38, § 1; Ga. L. 1991, p. 1653, § 2-3.)

50-8-14. Exemption from “Georgia Administrative Procedure Act.”

The administration of programs, grants, and other activities covered by this chapter shall not be covered by, subject to, or required to comply with or satisfy any provision of Chapter 13 of this title, known as the “Georgia Administrative Procedure Act.” (Code 1981, § 50-8-14, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-15. Rights of state employees transferred from State Building Administrative Board; validity of board’s legal contracts.

(a) State employees transferred from the State Building Administrative Board on March 31, 1980, shall continue to retain all rights, entitlements,

and privileges as state employees and participate in the various state personnel programs as they were previously entitled or otherwise authorized.

(b) Any legal contracts entered into by the State Building Administrative Board which were in effect on March 31, 1980, are transferred and shall continue in effect under the Department of Community Affairs until their normally prescribed termination or expiration. (Code 1981, § 50-8-15, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-16. Rights of state employees transferred from Bureau of Community Affairs; validity of bureau's legal contracts.

(a) State employees transferred from the Bureau of Community Affairs to the Department of Community Affairs on July 1, 1977, shall retain all rights, entitlements, and privileges as state employees and shall participate in the various state personnel programs as they were previously entitled or authorized to participate.

(b) Any legal contracts entered into by the bureau which were in effect on July 1, 1977, are transferred and shall continue in effect under the Department of Community Affairs under their normally prescribed termination or expiration. (Code 1981, § 50-8-16, enacted by Ga. L. 1988, p. 38, § 1.)

50-8-17. Employees serve in unclassified service; election option for current classified employees.

Employees of the department shall serve in the unclassified service of the State Personnel Administration as defined by Code Section 45-20-6, provided that employees who serve in the classified service of the State Personnel Administration as defined by Code Section 45-20-6 may elect to remain in the classified service and be governed by the provisions thereof; provided, however, that if such person accepts a promotion or transfer to another position, he or she shall become an employee in the unclassified service. (Code 1981, § 50-8-17, enacted by Ga. L. 1996, p. 872, § 8; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2010, substituted "State Personnel Administration" for "state merit system" twice in this Code section.

50-8-18. (Effective July 1, 2010) Energy efficient construction of major state-funded facility projects; short title; legislative findings; "major facility project" defined.

(a) This Code section shall be known and may be cited as the "Energy Efficiency and Sustainable Construction Act of 2008."

(b) The General Assembly finds that the welfare of this state is enhanced by the promotion of effective energy and environmental standards for construction, rehabilitation, and maintenance of state-funded facilities and that such standards in turn improve this state's capacity to design, build, and operate high-performance buildings, contributing to economic growth, promoting job development, and increasing energy conservation.

(c) For purposes of this Code section, "major facility project" means a state-funded:

(1) New construction building project of a building exceeding 10,000 square feet;

(2) A renovation project that is more than 50 percent of the replacement value, as determined by the Department of Administrative Services Risk Management Division, of the facility, a change in occupancy, or any roof replacement project exceeding 10,000 square feet; or

(3) A commercial interior tenant fit-out project exceeding 10,000 square feet of leasable area where the state is intended to be the lessor of such property.

A major facility project shall not include a building, regardless of size, that does not have conditioned space as defined by the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE) and shall not include a state owned building that is on the historical registry or any local, county, or municipal building.

(d) Consistent with the intent of this Code section, the department, in consultation with the Georgia State Finance and Investment Commission, shall adopt policies and procedures as recommended standards for all buildings owned or managed by this state that:

(1) Optimize the energy performance;

(2) Increase the demand for construction materials and furnishings produced in Georgia;

(3) Improve the environmental quality in this state by decreasing the discharge of pollutants from such state buildings;

(4) Conserve energy and utilize local and renewable energy sources;

(5) Protect and restore this state's natural resources by avoiding the development of inappropriate building sites;

(6) Reduce the burden on municipal water supply and treatment by reducing potable water consumption;

(7) Establish life cycle assessments as the appropriate and most efficient analysis to determine a building project's environmental performance level; and

(8) Encourage obtaining Energy Star designation from the United States Environmental Protection Agency to further demonstrate a building project's energy independence.

(e) All major facility projects may be designed, constructed, and commissioned or modeled to exceed the standards set forth in ASHRAE 90.1.2004 by 30 percent where it is determined by the department that such 30 percent efficiency is cost effective based on a life cycle cost analysis with a payback at no more than ten years. Commissioning or modeling must be performed by a professional engineer, design professional, or commissioning agent using software methodology approved by the Internal Revenue Service, the Department of Energy, current ASHRAE standards, or other similar methodology. For all major renovation projects, such requirements shall apply to the specific building assemblies, envelope components, and equipment involved in the project.

(f) All major facility projects shall be designed, constructed, and commissioned or modeled to achieve a 15 percent reduction in water use when compared to water use based on plumbing fixture selection in accordance with the Energy Policy Act of 1992.

(g) To achieve sustainable building standards, construction projects may utilize a nationally recognized high performance energy modeling and environmental building rating system; provided, however, that any such rating system that uses a material or product based credit system that operates to the detriment of materials or products manufactured or produced in Georgia shall not be utilized. The department shall designate rating systems that meet these criteria and is authorized to establish its own alternative rating system. All major facility projects shall include Georgia products such that not less than 10 percent of all building materials used in a project are harvested, extracted, or manufactured in the State of Georgia where such products are commercially available in a manner consistent with the purposes of this Code section.

(h) A professional engineer, design professional, or commissioning agent shall certify that the building project's systems for heating, ventilating, air conditioning, energy conservation, and water conservation are installed and working properly to ensure that each building project performs according to the building's overall environmental design intent and operational objectives. (Code 1981, § 50-8-18, enacted by Ga. L. 2008, p. 224, § 4/SB 130.)

Effective date. — This Code section becomes effective July 1, 2010.

Editor's notes. — Ga. L. 2008, p. 224, § 7, not codified by the General Assembly, provides that this Code section shall apply to

design agreements for major facilities projects entered into on or after July 1, 2010.

U.S. Code. — The Energy Policy Act of 1992, referred to in subsection (f), is codified at 42 U.S.C. § 13201 et seq.

ARTICLE 2

REGIONAL COMMISSIONS

Editor's notes. — Ga. L. 2008, effective July 1, 2009, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 50-8-30 through 50-8-34, 50-8-34.1, 50-8-35 through 50-8-39, 50-8-39.1, and 50-8-40 through 50-8-46, relating to regional development centers, and was based on Ga. L. 1989, p. 1317, § 3.1, and Ga. L. 1992, p. 1271, § 1; Ga. L. 1992, p.

2108, § 1; Ga. L. 1993, p. 1374, §§ 1-4; Ga. L. 1994, p. 1636, §§ 2-9; Ga. L. 1995, p. 1302, § 15.

Administrative rules and regulations. — Minimum standards and procedures for regional planning, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-6.

50-8-30. Legislative findings and intent; construction of article.

The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. Coordinated and comprehensive planning by local governments, under direction from the state, is necessary in order to serve these essential public interests of the state. The purpose of this article is to provide for regional commissions to develop, promote, and assist in establishing coordinated and comprehensive land use, environmental, transportation, and historic preservation planning in the state, to assist local governments to participate in an orderly process for coordinated and comprehensive planning, to assist local governments to prepare and implement comprehensive plans which will develop and promote the essential public interests of the state and its citizens and advance positive governmental relations among the state, regional, and local levels, and to prepare and implement comprehensive regional plans which will develop and promote the essential public interests of the state and its citizens. This article shall be construed liberally to achieve its purpose. This article is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV. (Code 1981, § 50-8-30, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

Cross references. — Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

Administrative rules and regulations. — Minimum planning standards and procedures for local comprehensive planning, Of-

ficial Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Office of Coordinated Planning, Chapter 110-3-2.

Minimum standards and procedures for local comprehensive planning, Official Com-

pilation of the Rules and Regulations of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-12-1.

Minimum standards and procedures for

regional planning, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Affairs, Chapter 110-12-6.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-30, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Participation of county or municipality as member of Atlanta Regional Commission. — A county or municipality may participate as a

member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1 (decided under former O.C.G.A. § 50-8-30).

50-8-31. Definitions.

As used in this article, the term:

(1) "Commission" means a regional commission established pursuant to this article, including its predecessor, a "regional development center."

(2) "Commissioner" means the commissioner of community affairs.

(3) "Comprehensive plan" means any plan by a county or municipality covering such county or municipality or any plan by a regional commission covering the commission's region proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans, established by the department in accordance with Article 1 of this chapter.

(4) "Conflict" means any conflict, dispute, or inconsistency arising:

(A) Between or among comprehensive plans for any counties or municipalities, as proposed, prepared, proposed to be implemented, or implemented;

(B) Between or among comprehensive plans for any counties or municipalities and comprehensive plans for the region which includes such counties or municipalities, as such plans may be proposed, prepared, proposed to be implemented, or implemented;

(C) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government relating to or affecting regionally important resources, as defined by the department; or

(D) With respect to or in connection with any action proposed to be taken or taken by any county, municipality, or other local government

relating to or affecting developments of regional impact, as defined by the department.

(5) "Constitution" means the Constitution of the State of Georgia.

(6) "Contract" means any contract, agreement, or other legally binding arrangement.

(7) "Coordinated and comprehensive planning" means planning by counties and municipalities and by regional commissions in accordance with the minimum standards and procedures.

(8) "Council" means the council governing each regional commission.

(9) "County" means any county of this state, including any consolidated governments.

(10) "Department" means the Department of Community Affairs.

(11) "Governing body" means the board of commissioners of a county, sole commissioner of a county, council, commissioners, or other governing authority for a county or municipality.

(12) "Government" means any governmental unit on the federal, state, or local level and any department, agency, or authority of any such governmental unit and shall include all local governments, school districts, state agencies, and state authorities.

(13) "Governmental services" means those necessary services provided by local units of government of this state.

(14) "Human service programs" means any activity authorized by law to be undertaken by the state or by any unit of local government in which it is undertaken, the funds for which program are provided by or through the United States government, an adjoining state, this state, any unit of local government, any agency or instrumentality of the foregoing, or a public or private organization, the purpose of which is to provide assistance to and relieve the special burdens of the young, the indigent, the aged, persons with disabilities, the unemployed, or the ill.

(15) "Local government" means any county, municipality, or other political subdivision of the state; any regional commission; any public agency or public authority, except any state agency or state authority, created under the Constitution or by Act of the General Assembly; and shall include public agencies and public authorities which are created or activated pursuant to the Constitution or Act of the General Assembly or by action of the governing body of any county, municipality, or other political subdivision of the state, separately or in any combination, and shall include any group of counties or municipalities which forms the group to carry out jointly any lawful purposes but shall not include school districts.

(16) “Local plan” means the comprehensive plan for any county or municipality.

(17) “Minimum standards and procedures” means the minimum standards and procedures, including the minimum elements which shall be addressed and included, for preparation of comprehensive plans, for implementation of comprehensive plans, and for participation in the coordinated and comprehensive planning process, as established by the department. Minimum standards and procedures shall include any elements, standards, and procedures for such purposes prescribed by a regional commission for counties and municipalities within its region and approved in advance by the department, in accordance with Article 1 of this chapter.

(18) “Municipality” has the same meaning as provided in Code Section 36-30-1.

(19) “Necessary” means necessary, desirable, or appropriate, as determined by the commissioner, unless the context clearly indicates a different meaning.

(20) “Nonpublic council member” means any council member who is a resident of a county within the region, who is not an elected or appointed official or employee of any county or municipality, and who is appointed as a nonpublic member for that county pursuant to subsection (b) of Code Section 50-8-34.

(21) “Nonpublic funds” means the servicing and processing fees which are received by a nonprofit corporation for administering federal or state revolving loan programs or loan packaging programs.

(22) “Qualified local government” means a county or municipality which:

(A) Has a comprehensive plan in conformity with the minimum standards and procedures;

(B) Has made its local plan implementation mechanisms consistent with those established in its comprehensive plan and with the minimum standards and procedures; and

(C) Has not failed to participate in the department’s mediation or other means of resolving conflicts in a manner which, in the judgment of the department, reflects a good faith effort to resolve any conflict.

(23) “Region” means the territorial area within the boundaries of operation for any regional commission, as such boundaries shall be established from time to time by the board of the department.

(24) “Regional commission” means a commission established under this article.

(25) “Regional plan” means the comprehensive plan for a region.

(26) “State” means the State of Georgia. (Code 1981, § 50-8-31, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-31, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Authority to loan or borrow funds. — The expanded duty and authority given Regional Development Centers under O.C.G.A.

§ 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-31).

50-8-32. Creation of regional commissions.

Regional commissions are created and established as public agencies and instrumentalities of their members which shall facilitate coordinated and comprehensive planning in conformity with minimum standards and procedures established pursuant to law. Regional commissions shall function as the regional planning entity for land use, environmental, transportation, and historic preservation planning in each designated region of the state. Each such agency and instrumentality shall be known as a regional commission and shall be designated, by name for all purposes, with such identifying words before the term “regional commission” as the Board of Community Affairs may, from time to time in accordance with the provisions of subsection (f) of Code Section 50-8-4, choose and designate by official action. The number of regional commissions and the region within which each regional commission shall operate shall initially be established and subsequently may be changed from time to time by the Board of Community Affairs pursuant to Code Section 50-8-4. Each county shall be wholly within the region of one regional commission, and no county shall be divided among more than one region. Without limiting the generality of the foregoing, the Board of Community Affairs shall establish the boundaries of any region for which a metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, also serves as the regional commission. (Code 1981, § 50-8-32, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-32, which was subsequently repealed but was succeeded by pro-

visions in this Code section, are included in the annotations for this Code section.

No authority to create nonprofit corporation. — Because a Regional Development

Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-32).

Participation of county or municipality as member of Atlanta Regional Commission. — A county or municipality may participate as a

member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att'y Gen. No. 2004-1 (decided under former O.C.G.A. § 50-8-32).

50-8-33. Municipal and county membership; annual dues; distribution of state funds.

(a) Each municipality and county in the state shall automatically be a member of the regional commission for the region which includes the municipality or county, as the case may be.

(b)(1) Each county and municipality in the state shall pay the annual dues for membership in its regional commission. Each county and the municipalities within such county shall continue to use the arrangement for the payment of dues which was in effect on June 30, 2009, for the payment of dues to the regional development centers which preceded the regional commissions created by this article until a revised arrangement for the amount, apportionment, and payment of annual dues is established by the county and the municipalities within such county. If an arrangement for the payment of such dues is structured so that a county pays dues only on behalf of residents of the unincorporated areas of the county, then the annual dues paid by such county shall come solely from revenues derived from the unincorporated areas of the county.

(2) State funds appropriated to the department and available for the purpose of assisting regional commissions shall be distributed in accordance with this paragraph. The department shall establish a minimum funding amount for regional commissions, conditioned upon the amount of state funds appropriated, and a supplemental funding formula to be used for the distribution of available state funds in excess of the minimum funding amount. While each regional commission must assess and collect annual dues in the amount of 25¢ for each resident of each county within the regional commission, based upon the most recent estimate of population approved by the department for this purpose, to be eligible for any minimum funding from state appropriated funds, each regional commission must assess and collect annual dues in the aggregate averaging a minimum amount of \$1.00 for each resident of each county within the regional commission, based upon the most recent estimate of population approved by the department for this purpose. To be eligible for any supplemental funding, each regional commission shall apply to the department in a manner established by the department to determine eligibility for funds distributed pursuant to the supplemental funding formula.

(3) The initial supplemental funding formula established by the department to be used for the distribution of available state funds in excess of the minimum funding amount shall be promulgated by the department in accordance with the procedures of Code Section 50-8-7.2. (Code 1981, § 50-8-33, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-34. Councils of regional commissions; membership; terms of membership; voting; officers; powers.

(a) The council of each regional commission shall establish policy and direction for the regional commission and shall perform such other functions as may be provided or authorized by law.

(b) The manner of selecting such regional commission council members shall be as prescribed by its bylaws and membership on the council shall be determined as follows:

(1) The council shall include the chief elected official of each county governing body in the region for a period of time concurrent with each such elected official's term of elected office. If the chief elected official for a county is unable to serve on the council, he or she shall appoint another elected county official. In the case of a consolidated government where there is not another municipality located within the boundaries of the county, a second member of such consolidated government shall be appointed to the board;

(2) The council shall include one elected official from one municipality in each county in the region for a period of time concurrent with each such elected official's term of elected office;

(3) The council shall include three residents of the region appointed by the Governor, each for a term of two years. One of such three appointees shall be a member of a school board located within the region or a superintendent of schools within the region, and two of such three appointees shall be nonpublic council members;

(4) The council shall include one nonpublic council member appointed by the Lieutenant Governor for a term of two years and one nonpublic council member appointed by the Speaker of the House of Representatives for a term of two years; and

(5) The council may include any additional members determined necessary by the commissioner for purposes of complying with laws or regulations, or otherwise. Any such additional members shall be selected by the council and shall serve for a term of one year.

(c) The term of a member shall terminate immediately upon:

(1) Resignation by a member;

(2) Death of a member or inability to serve as a member due to medical infirmity or other incapacity; or

(3) Any change in local elective office or residence of a member which would cause the composition of the council not to comply with the requirements of subsection (b) of this Code section.

(d) Each member of the council shall have one vote. Establishment of a quorum for purposes of the conduct of business shall be determined by the bylaws of the regional commission.

(e) Each regional commission council shall elect from among its council members a chairperson, vice chairperson, and secretary or treasurer who shall serve for a term of two years and until their successors are elected and qualified. Such elections shall be held biennially at a meeting designated for that purpose in the regional commission's bylaws.

(f) Each council shall exercise the following powers:

(1) The powers, duties, responsibilities, and functions enumerated in Code Section 50-8-35;

(2) The appointment and removal of a full-time executive director for the regional commission;

(3) The establishment of such committees as the council shall deem appropriate;

(4) The adoption of an annual work program for the regional commission;

(5) The adoption of an annual budget to support the annual work program; and

(6) The determination of the policies and programs to be implemented and operated by the regional commission as may be provided or authorized by law. (Code 1981, § 50-8-34, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-34.1. Executive director of commission; performance standards and annual performance review.

(a) Each regional commission shall have an executive director who shall serve at the pleasure of the council and who shall be subject to appointment and removal by a majority vote of the members of the council. The executive director shall perform such duties as assigned by the council.

(b) Each regional commission council shall require performance standards for measurement of the activities of the regional commission. The council shall conduct an annual performance review of the executive director of the regional commission measured by standards developed by

the council. (Code 1981, § 50-8-34.1, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-35. General powers.

(a) Each regional commission, as authorized by the council of such regional commission and consistent with federal and state law, shall perform the duties, responsibilities, and functions and may exercise the power and authority described in this Code section. Each commission may exercise the following power and authority:

(1) Each commission may adopt bylaws and make rules and regulations for the conduct of its affairs;

(2) Each commission may make and enter into all contracts necessary or incidental to the performance of its duties and functions so long as the chairperson of the commission's council and the executive director of the commission jointly execute any such contracts between a regional commission and state or federal agencies, or any other such contracts as determined by the bylaws or the council. Neither a commission, nor any nonprofit corporation established or controlled by that commission, may enter into any contract obligating that regional commission or nonprofit corporation to perform services for any political subdivision, individual, or business entity located wholly outside the boundaries of that commission's region, except that one commission, on its own behalf and not on behalf or for the direct benefit of any political subdivision, individual, or business entity within that commission's boundaries, may contract with another commission to provide services for the benefit of one or both commissions. A commission may contract with any state agency for coordinated and comprehensive planning covering areas not within the territorial boundary of the commission, provided that any such contract is made with the approval of the regional commission's council;

(3) Each commission may acquire and dispose of real and personal property;

(4) Each commission may utilize the services of the Department of Administrative Services;

(5) Each commission may prepare studies of the area's resources as they affect existing and emerging problems of industry, commerce, transportation, population, housing, agriculture, public services, local governments, and any other matters relating to area planning and development;

(6) Each commission may collect, process, and analyze, at regular intervals, the social and economic statistics for the region, which statistics are necessary to planning studies, and make the results available to the general public;

(7) Each commission may participate with local, state, or federal governmental agencies, educational institutions, and public and private organizations in the coordination and implementation of research and development activities;

(8) Each commission may cooperate with all units of local government and planning and development agencies within the commission's region and coordinate area planning and development activities with those of the state and of the units of local government within the commission's region as well as neighboring regions and with the programs of federal departments, agencies, and regional commissions; and provide such technical assistance, including data processing and grant administration services for local governments, as may be requested of it by a unit or units of local government within the commission's region; and such technical assistance shall not be limited to planning and development activities but may include technical assistance of any nature requested by a unit or units of local government within the commission's region;

(9) Each commission may carry out such other programs as its council or the department shall require from time to time;

(10) Each commission may, when appropriate, administer funds involving more than one political subdivision;

(11) Each commission may, upon the signed resolution of its council and written approval by each unit of local government affected, initiate, continue, or renew arrangements with the United States government, an adjoining state, this state, a unit of local government, any agency or instrumentality of the foregoing, or a public or private organization for the management, administration, or operation of human service programs by such regional commission. The commission shall be permitted to enter into contracts to provide, or to provide directly with the council's approval, governmental services on behalf of the local governments. Direct services shall be provided to a municipality or county only after such municipality or county has passed a resolution requesting such services and the council has approved the municipality's or county's resolution. Contracts for direct services pursuant to this paragraph shall be for one year, subject to renewal. Direct services shall not include human service programs. Contracts for government services may specifically authorize governmental services other than human service programs in writing from time to time and for any specified period of time. Services provided by human services programs may be provided if the regional commission enters into contracts with other authorized entities, including units of local government, for the delivery of goods or services to individual consumers. A commission providing direct services pursuant to this paragraph shall not provide such services on a for profit basis. Regional commissions shall be authorized to provide technical assistance to units of local government in areas of governmental services; and

(12) Each commission may provide the following benefits to its employees, their dependents, and survivors, in addition to any compensation or other benefits provided to such persons:

(A) Retirement, pension, disability, medical, and hospitalization benefits, through the purchase of insurance or otherwise;

(B) Life insurance coverage and coverage under federal old age and survivors' insurance programs;

(C) Sick leave, annual leave, military leave, and holiday leave; and

(D) Any other similar benefits including, but not limited to, death benefits.

(b) Each commission shall adopt personnel policies and practices with specific reference to job descriptions and qualifications. Minimum qualifications for the professional personnel of each regional commission shall be established by the council of the regional commission.

(c) Each commission shall undertake and carry out such planning and technical assistance activities as its council or the department may deem necessary for the development, preparation, and implementation of comprehensive plans for the commission's region and for municipalities and counties within the commission's region and such planning and technical assistance activities as its council or the department may deem necessary for coordinated and comprehensive planning within the commission's region. Such planning and technical assistance activities may include, but shall not be limited to, the following:

(1) A commission may coordinate and assist local governments in preparing local plans for submission to the regional commission;

(2) A commission may provide technical planning assistance to local governments;

(3) A commission may develop and prepare a local plan for a county or municipality if the county or municipality enters into a contract with a commission for that purpose;

(4) A commission may require that comprehensive plans within its region include elements in addition to those established by the department as minimum standards and procedures but, before imposing any such requirement, the commission shall have received the department's approval of any additional elements to be included in such comprehensive plans;

(5) A commission may establish within its comprehensive plan goals, objectives, policies, and recommendations consistent with those established by the Governor's Development Council or by the department, for its region; and

(6) Each commission shall prepare and adopt a regional plan and submit the regional plan to the department. The regional plan shall take into consideration issues and opportunities facing the region, the commissioner's recommendations to address such issues, and local plans within the region. The regional plan may be prepared but shall not be adopted by the council until after a proposed regional plan has been made public, reviewed, and approved as meeting the minimum requirements of the department; and after the council has held, or caused to be held by a designated hearing officer, a public hearing on the regional plan, in accordance with such procedures as the department may establish.

(d) Each commission shall participate in compiling a Georgia data base and network, coordinated by the department, to serve as a comprehensive source of public information available, in an accessible form, to local governments, state agencies, and members of the General Assembly.

(e) A commission shall serve as liaison with other governments, including federal government agencies and state agencies. In this capacity, a commission may administer programs within the state upon the request of its council and may administer federal or state government programs upon designation by the federal or state government. Each commission shall be designated as the official planning agency for all state and federal programs to be carried out in the region if such designation is required and if the department concurs in such designation. A commission may take all action and shall have all power and authority necessary to carry out its responsibilities, duties, and functions under any such state or federal programs.

(f)(1)(A) In order to accomplish the intent of subsection (e) of this Code section, each regional commission is authorized to create nonprofit corporations to administer federal or state revolving loan programs or loan packaging programs, and to administer federal or state housing and development programs and funds available only to nonprofit corporations. Each such nonprofit corporation must be authorized by the commission's council and each unit of local government affected.

(B) Any nonprofit corporation which, prior to April 1, 1994, has been created by a commission or its predecessor and has had articles of incorporation which are regular on their face accepted for filing by the Secretary of State shall be recognized as and have legal status as a validly created nonprofit corporation under the laws of this state for all purposes, notwithstanding the requirements of subparagraph (A) of this paragraph and notwithstanding any lack of express statutory authority on the part of the commission to carry out such incorporation at the time of filing of the articles of incorporation. Nothing in this subparagraph, however, shall excuse such a nonprofit corporation from complying on and after April 1, 1994, with any and all require-

ments imposed by law for continuation of its corporate existence in the same manner as other nonprofit corporations created under this paragraph are required to comply with legal requirements for their continued existence.

(2) Employees and any other authorized representatives of a nonprofit corporation created pursuant to paragraph (1) of this subsection are authorized to expend nonpublic funds of such corporation for the business meals and incidental expenses of bona fide industrial prospects and other persons who attend any meeting at the request of the nonprofit corporation to discuss the location or development of new business, industry, or tourism within the commission's region. All such expenditures shall be verified by vouchers showing date, place, purpose, and persons for whom such expenditures were made. All receipts of nonpublic funds shall be evidenced by vouchers showing the date, amount, and source of each receipt. A schedule shall be included in each annual audit which reports the beginning balance of unexpended nonpublic funds; the date, amount, and source of all receipts of nonpublic funds; the date, place, purpose, and persons for whom expenditures were made for all such expenditures of nonpublic funds; and the ending balance of unexpended nonpublic funds. The auditor shall verify and test such beginning balances, receipts, expenditures, and ending balances sufficient to express an opinion thereon in accordance with generally accepted government auditing standards.

(3) A nonprofit corporation shall keep books of account reflecting all funds received, expended, and administered by the nonprofit corporation which shall be independently audited at least once in each fiscal year during which a nonprofit corporation functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a nonprofit corporation and shall annually review the audit procurement process to determine compliance with established policies and procedures. The nonprofit corporation shall be responsible for the costs associated with such audit. The auditor's report shall be presented to the commissioner, who shall make such report available to each council member within the region and to the Board of Community Affairs. The books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each nonprofit corporation shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner.

(4) Each nonprofit corporation shall submit to the department copies of all filings made to federal, state, or local taxing authorities, including filings related to tax exemptions simultaneous with such filings.

(5)(A) Each annual audit report of a nonprofit corporation shall be completed and a copy of the report forwarded to the state auditor

within 180 days after the close of the nonprofit corporation's fiscal year. In addition to the audit report, the nonprofit corporation shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(B) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in paragraph (3) of this subsection. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or written comments, notify the nonprofit corporation and the auditor who performed the audit and shall submit to them a list of the deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the commission related to the nonprofit corporation, the chief elected official of each county and municipality within the commission's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the commission's region.

(C) If the state auditor has not received any required audit or written comments by the date specified in subparagraph (A) of this paragraph, the state auditor shall within 30 days of such date notify the nonprofit corporation that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the commission related to the nonprofit corporation, the chief elected official of each county and municipality within the related commission's region, and to each member of the General Assembly whose senatorial or representative district includes any part of the related commission's region.

(D) The state auditor, for good cause shown by those nonprofit corporations in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same nonprofit corporation.

(6) A copy of the report and of any comments made by the state auditor pursuant to subparagraph (B) of paragraph (5) of this subsection shall be maintained as a public record for public inspection during the regular working hours at the principal office of the nonprofit corporation and the related commission.

(7) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or

a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the related commission's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once a week for two consecutive weeks and shall state that the nonprofit corporation has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(8) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same nonprofit corporation.

(g) A commission shall be prohibited from either creating or controlling or causing to be created any nonprofit corporation, except as authorized in paragraph (1) of subsection (f) of this Code section.

(h) Neither a commission nor a nonprofit corporation either created or controlled or caused to be created by the commission shall administer any federal program which prohibits the state auditor from conducting a performance audit relative to such program.

(i) In any case where a commission contracts with a state agency, the contract shall include a provision requiring cancellation of the contract if the department determines that the commission or a nonprofit corporation either created or controlled or caused to be created by the commission is not fully cooperating with a performance audit conducted by the department.

(j) Each commission shall develop a department approved continuing education program for professional staff members of such commissions. (Code 1981, § 50-8-35, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 50-8-35, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Performance audits of regional development centers and nonprofit corporations. —

Department of Community Affairs had statutory authority to conduct performance audits of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. Coastal Ga.

Regional Dev. Ctr. v. Higdon, 263 Ga. 827, 439 S.E.2d 902 (1994) (decided under former O.C.G.A. § 50-8-35).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. §§ 50-8-34 and 50-8-35, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Public accountability. — Regional development center is not subject to the minimum budget and auditing requirements set forth in O.C.G.A. § 36-81-1 et seq.; however, a center is subject to public accountability under other provisions of state law. 1990 Op. Att'y Gen. No. 90-37 (decided under former O.C.G.A. § 50-8-35).

Regional development center lacks authority to abrogate the center's duty to be accountable for the nonprofit corporations the center is authorized to create. 1996 Op. Att'y Gen. No. 96-8 (decided under former O.C.G.A. § 50-8-35).

Administration of Job Training Partnership Program by Private Industry Council. — Regional development center is authorized to contract with a Private Industry Council to administer the Job Training Partnership Program within the council's service delivery area as long as the council's service delivery area overlaps the territorial boundaries of the regional development center. 1990 Op. Att'y Gen. No. 90-27 (decided under former O.C.G.A. § 50-8-35).

Use of grant funds. — Regional Development Center cannot accept grant funds for a purpose which is either specifically prohibited or which the center lacks authority to perform, except that, upon the signed resolution of the center's board and written approval by each unit of local government affected, a Regional Development Center may enter into contracts with other authorized entities for the delivery of human service programs; provided, the service delivery area overlaps the territorial boundaries of the Regional Development Center. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Delivery of goods and services. — Regional Development Center would not be

prohibited from performing eligibility certification under the Job Training Partnership Act, 29 U.S.C. § 1501 et seq., inasmuch as the "intake" process merely involves screening applicants for appropriate referral to the organization which will actually conduct the training or delivery of services. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Authority to loan or borrow funds. — The expanded duty and authority given Regional Development Centers under former O.C.G.A. § 50-8-35(e) would authorize a Regional Development Center to loan funds to the extent necessary in administering any federal or state programs; however, it would not authorize a Regional Development Center to borrow money from private lenders. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

No authority to create nonprofit corporation. — Because a Regional Development Center is a public agency and an instrumentality of the municipalities and counties in its region, it is not an entity authorized by law to create a nonprofit corporation. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

No authority to pay entertainment expenses. — Regional Development Centers, as public agencies and instrumentalities of the municipalities and counties in its region, are subject to the Georgia Constitution's gratuities clause. Absent any specific authorizing statute, the payment of entertainment expenses would be unauthorized. Indeed, such an expenditure would constitute a gratuity in violation of the Georgia Constitution. 1992 Op. Att'y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-35).

Membership in contracting corporation precluded. — Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation created by the RDC, pursuant to former O.C.G.A. § 50-8-35(f)(1), during the period that a contract exists between the two entities. 1993 Op. Att'y Gen. No. 93-1 (decided under former O.C.G.A. § 50-8-35).

Scope of authority. — Regional Development Center has only such powers as are conferred upon it by the legislature, either expressly or by necessary implication. 1992 Op. Att’y Gen. No. 92-1 (decided under former O.C.G.A. § 50-8-34).

Election of nonpublic board members,

presence required. — Regional Development Center board member’s right to vote for a nonpublic board member is limited to those board members who are actually present at the time the vote is taken in a legal meeting. 1994 Op. Att’y Gen. No. 94-17 (decided under former O.C.G.A. § 50-8-34).

50-8-36. Review, comment, and recommendation regarding local plans; public meetings and hearings.

(a) Each local plan shall be submitted for review, comment, and recommendation to the appropriate regional commission and shall become effective in accordance with this Code section. Each municipality and county within a region shall submit its local plan to the regional commission for that region for review, comment, and recommendation by the regional commission. The commission shall maintain all local plans which it receives in this manner in files available for inspection by the public.

(b) Within ten days after receipt of a local plan, the regional commission shall notify each municipality or county within its region which may be affected by the local plan of the general nature of the plan, the date of its submission, and the identity of the submitting municipality or county. In addition, any local governments contiguous to, or operating within, the submitting municipality or county shall be notified by the regional commission in the same manner.

(c) Within 15 days after the regional commission gives the notice required by subsection (b) of this Code section, any local government within the region and any other local government which received notice from the regional commission may present, to the regional commission, its views on the local plan in a public meeting or hearing which shall be held in accordance with rules established by the regional commission with prior approval of the department.

(d) The regional commission shall determine whether the adoption or implementation of the local plan would present any conflict. The regional commission may recommend a modification of the local plan in such a manner as to eliminate any conflict or alleviate any problem or difficulty which such conflict may create. The regional commission’s determination shall be in writing, shall be made public, and shall be communicated by written notice given to the municipality or county which submitted the local plan within 15 days after the date of the public meeting or hearing.

(e) The municipality or county which submitted the local plan may request reconsideration of any recommendation by a regional commission within ten days after the regional commission’s recommendation is made public. For purposes of such reconsideration, the regional commission shall schedule, announce, and hold a public hearing within 15 days after receipt

of the request for reconsideration. Notice of the time and place of any such public hearing shall be given by the regional commission to all members of the regional commission, in accordance with such procedures as the regional commission may establish, subject to the prior approval of the department. The regional commission shall also give such notice to all affected municipalities and counties and appropriate state regulatory boards and agencies.

(f) Within ten days after the public hearing, the regional commission shall either continue its recommendations or modify the recommendations. In either case, the regional commission shall make public its determination and shall give written notice of its determination to the municipality or county which submitted the local plan.

(g) No municipality or county shall take any action to adopt any local plan, or to put into effect any local plan, until 60 days after the date when the municipality or county, as the case may be, submitted its complete local plan to the regional commission for review, comment, and recommendation, except that any request for reconsideration of any recommendation by a regional commission pursuant to subsection (e) of this Code section shall automatically operate to extend the 60 day period to 90 days. (Code 1981, § 50-8-36, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-37. Review by commission of applications submitted to United States or state or agency thereof.

A regional commission shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the state, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or state or agency thereof, transmit the same to the regional commission for its review. The comments of the regional commission shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the state, or any agency thereof. (Code 1981, § 50-8-37, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-38. Accounting of funds by commission; disclosure; access to documents.

(a) A regional commission shall keep books of account reflecting all funds received, expended, and administered by the regional commission which shall be independently audited at least once in each fiscal year during which a regional commission functions. Such audit shall be conducted in accordance with generally accepted government auditing standards. The

state auditor shall promulgate policies and procedures for procurement of such audit of the financial affairs of a regional commission and shall annually review the audit procurement process to determine compliance with established policies and procedures. The regional commission shall be responsible for the costs associated with such audit. The auditor's report shall be presented to the governing body of each member within the region and to the department. Beginning July 1, 1990, the books of account shall be kept in a standard, uniform format to be determined by the state auditor and the commissioner. Each regional commission shall update its books of account on a quarterly basis and shall present the quarterly update to the commissioner. The state auditor shall conduct at least triennially a performance audit of all state funds received by each regional commission and the department shall provide funds for such audits. The state auditor shall provide copies of a performance audit of a regional commission to the chief elected official of each county and municipality within the regional commission's region.

(b) In conducting a performance audit of a regional commission, the state auditor shall be allowed access to all books, records, and documents of the regional commission and all books, records, and documents of any nonprofit corporations either created or controlled or caused to be created by the regional commission, to the extent the state auditor deems necessary.

(c)(1) Each annual audit report of a regional commission shall be completed and a copy of the report forwarded to the state auditor within 180 days after the close of the regional commission's fiscal year. In addition to the audit report, the regional commission shall forward to the state auditor, within 30 days after the audit report due date, written comments on the findings and recommendations in the report, including a plan for corrective action taken or planned and comments on the status of corrective action taken on prior findings. If corrective action is not necessary, the written comments should include a statement describing the reason it is not.

(2) The state auditor shall review the audit report and written comments submitted to his or her office to ensure that they meet the requirements for audits provided for in subsection (a) of this Code section. If the state auditor finds the requirements for audits have not been complied with, the state auditor shall, within 60 days of his or her receipt of the audit or the written comments, notify the regional commission and the auditor who performed the audit and shall submit to them a list of deficiencies to be corrected. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the regional commission's region and to each member of the General Assembly whose senatorial or representative district includes any part of the regional commission's region.

(3) If the state auditor has not received any required audit or written comments by the date specified in paragraph (1) of this subsection, the

state auditor shall within 30 days of such date notify the regional commission that the audit has not been received as required by law. A copy of this notification shall also be sent by the state auditor to the chief elected official of each county and municipality within the regional commission's region and to each member of the General Assembly whose senatorial or representative district includes any part of the regional commission's region.

(4) The state auditor, for good cause shown by those regional commissions in which an audit is in the process of being conducted or will promptly be conducted, may waive the requirement for completion of the audit within 180 days. Such waiver shall be for an additional period of not more than 180 days and no such waiver shall be granted for more than two successive years to the same regional commission.

(d) A copy of the report and of any comments made by the state auditor pursuant to paragraph (2) of subsection (c) of this Code section shall be maintained as a public record for public inspection during the regular working hours at the principal office of the regional commission.

(e) Upon a failure, refusal, or neglect to have an annual audit made or a failure to file a copy of the annual audit report with the state auditor or a failure to correct auditing deficiencies noted by the state auditor, the state auditor shall cause a prominent notice to be published in the legal organ of and any other newspapers of general circulation within each county and municipality within the regional commission's region. Such notice shall be a prominently displayed advertisement or news article and shall not be placed in that section of the newspaper where legal notices appear. Such notice shall be published once a week for two consecutive weeks and shall state that the regional commission has failed or refused to file an audit report or to correct auditing deficiencies, as the case may be, for the fiscal year or years in question. Such notice shall further state that such failure or refusal is in violation of state law.

(f) The state auditor may waive the requirement of correction of auditing deficiencies for a period of one year from the required audit filing date, provided that evidence is presented that substantial progress is being made toward removing the cause of the need for the waiver. No such waiver for the same set of deficiencies shall be granted for more than two successive years to the same regional commission.

(g) Any other provision of this chapter to the contrary notwithstanding, nothing in this chapter shall be construed to require public disclosure of or access to any documents or information relating to loans made by or assigned to the United States Small Business Administration which are exempt from disclosure based upon the federal Privacy Act of 1974, the federal Freedom of Information Act, or the Code of Federal Regulations.

(h) Notwithstanding any other provision of this chapter, the state auditor shall not be authorized or required to conduct financial or performance

audits of any records or documents relating to loans made by or assigned to the United States Business Administration or any other entity or agency of the United States government if said agency's administrator certifies in writing to the state auditor that said records or documents may not be disclosed to state auditors under applicable federal regulations. (Code 1981, § 50-8-38, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former O.C.G.A. § 50-8-39, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Performance audits of regional development centers and nonprofit corporations. — Department of Community Affairs had statutory authority to conduct performance au-

dit of all nonprofit corporations created by regional development centers and the audits necessarily included authorized access to all of the books and records of the regional development centers and nonprofit corporations created by such centers. *Coastal Ga. Regional Dev. Ctr. v. Higdon*, 263 Ga. 827, 439 S.E.2d 902 (1994) (decided under former O.C.G.A. § 50-8-38).

RESEARCH REFERENCES

ALR. — What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 ALR Fed. 571.

50-8-39. Appointment of receiver of assets for protection of creditors upon center's ceasing of operations.

Upon a regional commission's ceasing operations, the local government members of the regional commission shall, within 30 days of cessation of the regional commission's operations, appoint a receiver of the assets of the regional commission for the protection of creditors. The receiver shall be authorized to marshal, sell, or transfer assets, pay liabilities, and assess counties and municipalities which were members of the regional commission. After the completion of such liquidation, a distribution shall be made to the local government members on a pro rata basis according to the amount of contributions such members made to the regional commission. (Code 1981, § 50-8-39, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-40. Notice of intent to designate area-wide or multicounty agency.

When federal or state law or regulations require the designation of an area-wide or multicounty public or private corporation, organization, or agency for multicounty delivery of human service programs, the state agency administering such programs shall send a notice of intent to designate such area-wide or multicounty corporation, organization, or agency to units of local government and the regional commissions in the area to be affected. The notice shall discuss in general the details of the

program and, when applicable, possible local government involvement. (Code 1981, § 50-8-40, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-41. Regional development centers succeeded by regional commissions.

Each regional development center in existence as of June 30, 2009, shall automatically be succeeded by the regional commission for the same region as of July 1, 2009, and each such regional commission shall be governed, from and after July 1, 2009, by this article. All contractual obligations, obligations to employees, other duties, rights, and benefits of such regional development center shall automatically become duties, obligations, rights, and benefits of their respective successor regional commissions. (Code 1981, § 50-8-41, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-42. Remaining powers of metropolitan area planning and development commissions.

Any metropolitan area planning and development commission, created pursuant to Article 4 of this chapter, shall also serve as the regional commission for the area covered by such metropolitan area planning and development commission. The duties, responsibilities, and functions and the power and authority granted the metropolitan area planning and development commission by law are, and shall be construed to be, cumulative with, and in addition to, the duties, responsibilities, and functions and the power and authority granted regional commissions by law. In the event of any conflict between the provisions of law governing metropolitan planning and development commissions and those governing regional commissions, however, the laws governing metropolitan area planning and development commissions shall control and shall govern the metropolitan area planning and development commission. For example, but without intending to limit the generality of the foregoing statement, the provisions of Code Sections 50-8-84 through 50-8-87, regarding membership of a metropolitan area planning and development commission, terms of officers, quorums, and elections of officers, would govern a metropolitan area planning and development commission instead of the provisions covering the same subject matter under this article. (Code 1981, § 50-8-42, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-43. Appropriation or loan of funds, facilities, supplies, and equipment by local government entities.

The governing authorities of the local governmental entities within each regional commission may appropriate or loan their funds, facilities, equipment, and supplies to the regional commission. (Code 1981, § 50-8-43, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-44. Exemption from taxes.

Each regional commission exists for nonprofit and public purposes; and it is found and declared that the carrying out of the purposes of each regional commission is exclusively for public benefit and its property is public property. Thus, no regional commission shall be required to pay any state or local ad valorem, sales, use, or income taxes. (Code 1981, § 50-8-44, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-45. Authorized purchases by Department of Administrative Services; commissioner of administrative services to prescribe regulations and standards.

(a) The following provisions apply to all regional commissions. The Department of Administrative Services is authorized to permit regional commissions, on an optional basis, to purchase their motor vehicles, material, equipment, services, and supplies through the state and to issue purchase orders for regional commissions for motor vehicles, material, equipment, services, and supplies.

(b) The regional commissions of this state are authorized to purchase stock from the state's central supply system operated by the Department of Administrative Services.

(c) The regional commissions of this state are authorized to purchase under state-wide term contracts and price agreements established by the Department of Administrative Services.

(d) The regional commissions of this state are authorized to receive directly from the Department of Administrative Services personal property declared surplus by the state.

(e) The commissioner of administrative services shall prescribe regulations necessary for implementation of this Code section and is authorized to establish minimum standards and uniform standard specifications and procedures for the purchase and distribution and disposition of motor vehicles, material, equipment, services, and supplies for the regional commissions of this state. (Code 1981, § 50-8-45, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-8-45, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Regional development center may purchase airline tickets under state-wide contracts established by the Department of Administrative Services with the respective airlines. 1992 Op. Att'y Gen. No. 92-22 (decided under former O.C.G.A. § 50-8-45).

50-8-46. No limits by article on county or municipal zoning power.

Nothing in this article shall limit or compromise the right of the governing authority of any county or municipality to exercise the power of zoning. (Code 1981, § 50-8-46, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

50-8-47. Transfer of outstanding assets, liabilities, contracts, staff, records, or debts.

The outstanding assets, liabilities, contracts, staff, records, or debts of any regional development center not existing after July 1, 2009, shall thereafter be transferred or disposed of by the commission the boundaries of which contain the boundaries of any former regional development district. (Code 1981, § 50-8-47, enacted by Ga. L. 2008, p. 181, § 5/HB 1216.)

ARTICLE 3**CONFLICTS OF INTEREST IN CONTRACT ADMINISTRATION****50-8-60. Definitions.**

As used in this article, the term:

(1) “Business” means any corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, self-employed individual, trust, or other legal entity.

(2) “Commission” means a regional commission established pursuant to Article 2 of this chapter.

(3) “Commissioner” means the commissioner of community affairs.

(4) “Council member” means any member of the council of a regional commission established under Article 2 of this chapter.

(5) “Employee” means any person who, pursuant to a written or oral contract, is employed by a regional commission or by a nonprofit corporation.

(6) “Family” means spouse and dependents.

(7) “Nonprofit corporation” means any nonprofit corporation created or controlled by a regional commission as expressly authorized by law, or as administratively authorized pursuant to subsection (f) of Code Section 50-8-35.

(8) “Person” means any person, corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or other legal entity.

(9) “Substantial interest” means the direct or indirect ownership of more than 25 percent of the assets or stock of any business.

(10) “Transact business” or “transact any business” means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; to purchase surplus real or personal property on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative; or to obtain loans or loan packaging services on behalf of oneself or any third party as an agent, dealer, broker, or representative. (Code 1981, § 50-8-60, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 5; Ga. L. 2008, p. 181, § 6/HB 1216.)

The 2008 amendment, effective July 1, 2009, deleted former paragraph (1), which read: “‘Board member’ means any member of the board of a regional development center established under Article 2 of this chapter.”; redesignated former paragraphs (2) through (4) as present paragraphs (1) through (3), respectively; in paragraph (2), substituted “‘Commission’ means a regional commission established pursuant to Article 2

of this chapter” for “‘Center’ means a regional development center established under Article 2 of this chapter”; added present paragraph (4); in paragraph (5), substituted “regional commission” for “center”; and, in paragraph (7), substituted “regional commission” for “regional development center” and deleted “paragraph (18) of Code Section 50-8-31 and” preceding “subsection (f)”.

50-8-61. Prohibited employment of employee of commission or nonprofit corporation; penalties.

(a) For the purposes of this chapter, when a commission or nonprofit corporation administers a contract in which it procures goods or services or makes loans or otherwise directs the expenditure of funds, no employee who is compensated for his or her services by either the commission or nonprofit corporation or any member of a board or advisory committee of the commission or nonprofit corporation that plays a role in determining such contracts, loans, or procurement decisions shall also serve, during the period of any such contract, loan, or procurement decision, as a board member, officer, independent contractor, or paid employee of the entity contracting with, borrowing from, or otherwise receiving funds from the commission or nonprofit corporation.

(b) This Code section shall not preclude an employee of a commission from serving, without compensation, as an officer of a nonprofit corporation for the purposes of executing loan transactions; nor shall this Code section preclude a commission and any nonprofit corporation that it creates or controls from entering into a contract with the other for the provision of staff services. In addition, this Code section shall not preclude an employee of a private financial institution from serving on a loan review or other advisory committee of a nonprofit corporation even when such financial institution participates in a loan of the nonprofit corporation. Further, this Code section shall not preclude a board member of a commission from also

serving as a member of a board or advisory committee of a nonprofit corporation created pursuant to paragraph (1) of subsection (f) of Code Section 50-8-35.

(c) Any person who knowingly violates this Code section shall be subject to the penalties provided for in Code Section 50-8-66. (Code 1981, § 50-8-61, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 6; Ga. L. 1998, p. 128, § 50; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, substituted “commis-

sion” for “center” throughout subsections (a) and (b).

OPINIONS OF THE ATTORNEY GENERAL

Membership on board of contracting corporation. — Regional Development Center (RDC) board member may not also serve as a board member of a non-profit corporation

created by the RDC, pursuant to former O.C.G.A. § 50-8-35(g)(1), during the period that a contract exists between the two entities. 1993 Op. Att’y Gen. No. 93-1.

50-8-62. Employee’s business transactions with commission or nonprofit corporation prohibited; penalties.

It shall be unlawful for any employee, any member of an employee’s family, or any business in which such employee or member of his family has substantial interest, individually or collectively, to transact any business with either the commission or nonprofit corporation by which such employee is employed or affiliated. Any person who knowingly violates this Code section shall be subject to the penalties provided for in Code Section 50-8-66. (Code 1981, § 50-8-62, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize,

and correct the Code, substituted “commission” for “center” in this Code section.

50-8-63. Disclosure of employee’s business transactions with local government; exempt transactions; disclosure of loan transactions by member of board or advisory committee; penalties.

(a) Except as provided in subsection (b) of this Code section, any employee, any member of such employee’s family, or any business in which such employee or any member of his family has a substantial interest, individually or collectively, who transacts business with any local government shall disclose such transactions annually. Such disclosures shall be submitted to the board of directors of the commission and to the commissioner prior to January 31 each year on such forms as are prescribed by the commissioner. At a minimum, the disclosures shall include an itemized list of the previous year’s transactions with the dollar amount of

each transaction reported and totaled. Such disclosure statements shall be public records.

(b) The requirement to disclose certain transactions as provided in subsection (a) of this Code section shall not apply to any transaction when the amount of a single transaction does not exceed \$100.00 and when the aggregate of all transactions does not exceed \$2,000.00 per calendar year.

(c) Any member of a board or advisory committee of the commission or nonprofit corporation who plays a role in determining loan transactions or any member of such person's family who obtains a loan or loan packaging services from such commission or nonprofit corporation shall disclose such transaction at the time of application for such loan or loan packaging services to the board of directors of the commission and to the commissioner. Such disclosure statements shall be public records.

(d) Any person who fails to file a disclosure statement as required in subsections (a) and (c) of this Code section shall be subject to the penalties provided for in Code Section 50-8-66. (Code 1981, § 50-8-63, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, substituted "commission" for "center" throughout subsections (a) and (c).

50-8-64. Competitive bidding requirement.

Each commission shall develop a system for competitive bidding relating to the purchase of supplies, equipment, and services and the letting of other contracts and submit written procedures governing such systems to the board of directors of the commission and to the commissioner. Such procedures must accommodate any applicable fund source requirements relating to procurement and must provide, at a minimum, that contracts let out for bid shall be awarded to the lowest responsible bidder. (Code 1981, § 50-8-64, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, in the first sentence of this Code section, substituted "Each commission" for "On or before January 1, 1993, each center", and substituted "board of directors of the commission" for "board of directors of the center".

50-8-65. Annual report to Board of Community Affairs.

Within 30 days after the completion of its fiscal year, each commission shall provide to the Board of Community Affairs a report containing the following information:

(1) The name and address of each contractor, public or private, with which the commission contracted and which received more than a total of \$500.00 from the commission; and

(2) The amount of public funds received by the contractor from the commission. (Code 1981, § 50-8-65, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, substituted “commis- sion” for “center” throughout this Code section.

50-8-66. Civil fine for violations.

Any employee who violates Code Section 50-8-61, 50-8-62, or 50-8-63 shall be subject to a civil fine not to exceed \$10,000.00. (Code 1981, § 50-8-66, enacted by Ga. L. 1992, p. 1271, § 2.)

50-8-67. Influence of election of council members prohibited; executive directors of regional commissions prohibited from participation in partisan political activities; adoption of disciplinary measures.

A member of a regional commission’s council or executive director of a regional commission shall not actively or directly attempt to influence the election of persons as members of the council of such regional commission. An executive director of a regional commission shall not participate in any partisan political activities. The council of a regional commission may adopt, as part of its personnel policies, disciplinary measures to be imposed for noncompliance with this Code section. (Code 1981, § 50-8-67, enacted by Ga. L. 1992, p. 1271, § 2; Ga. L. 1993, p. 1374, § 7; Ga. L. 2008, p. 181, § 7/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” throughout this Code section; in the first sentence, substituted “A member of a regional commission’s council or executive director of a regional commission” for “A director or chief administrative officer of a regional development center” near the beginning, and substituted “council” for “board” near the end; in the second sentence, substituted “An executive director” for “A director or chief administrative officer”; and, in the third sentence, substituted “The council” for “The board” near the beginning.

ARTICLE 4

METROPOLITAN AREA PLANNING AND DEVELOPMENT COMMISSIONS

50-8-80. Definitions.

As used in this article, the term:

(1) “Area” means a standard metropolitan statistical area located

wholly within this state as defined by the United States Executive Office of the President, Standard Metropolitan Statistical Area 1967, Part I Criteria, Office of Management and Budget, subject to any changes made by the Board of Community Affairs pursuant to Code Section 50-8-30. No area, county, or municipality may be designated as an "area" and added to this commission and come under the effective operation of this article without the affirmative vote of such area, county, or municipality or its governing body.

(2) "Area plan" means a written proposal that involves governmental action, expenditure of public funds, use of public property, or the exercise of franchise rights granted by any public body and which affects the citizens of more than one political subdivision of an area and which may have a substantial effect on the development of an area. Area plans may involve, but shall not be limited to, such matters as land use (not including zoning), water and sewerage systems, storm drainage systems, parks and open spaces, airports, highways and transit facilities, hospitals, public buildings, and other community facilities and services.

(3) "Commission" means a metropolitan area planning and development commission created in accordance with Code Section 50-8-82.

(4) "Development guides" means the comprehensive development guides adopted by a commission in accordance with Code Section 50-8-92.

(5) "District" means a district created pursuant to paragraph (5) of subsection (a) of Code Section 50-8-84.

(6) "Governing body" means the board of commissioners of a county or the mayor and city council of a municipality or other legislative body which governs a county or municipality.

(7) "Members at large" means those members of a commission elected pursuant to paragraph (6) of subsection (a) of Code Section 50-8-84.

(8) "Municipality" means an incorporated municipality of this state lying primarily within the area.

(9) "Political subdivision" means a county or municipality of this state lying wholly or partially within the area.

(10) "Public members" means those members of a commission holding office pursuant to paragraphs (1) through (5) of subsection (a) of Code Section 50-8-84.

(11) "Redistricting" means a redistricting of an area after publication of a United States decennial census in accordance with paragraph (5) of subsection (a) of Code Section 50-8-84. (Code 1981, § 50-8-80, enacted

by Ga. L. 1982, p. 2107, § 51; Ga. L. 1988, p. 1834, § 1; Ga. L. 1997, p. 442, § 1.)

Cross references. — Approval by General Assembly of alteration of boundaries of a regional development center, § 50-8-4.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan

planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 25C Am. Jur. Pleading and Practice Forms, Zoning and Planning, § 1 et seq.

50-8-81. Legislative intent.

It is in the public interest to create an agency composed of officials of political subdivisions and private citizens to coordinate planning and development within each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census; to designate the agency as the regional commission under Article 2 of this chapter to make the agency the official metropolitan agency for comprehensive research, study, advice, and review concerning area plans; to improve relationships between political subdivisions and public agencies within areas; and to provide policy direction for the solution of common problems through short and long-range comprehensive planning within areas. (Code 1981, § 50-8-81, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.22; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, “regional development center” near the 2009, substituted “regional commission” for middle of the Code section.

50-8-82. Creation of metropolitan area planning and development commission; first meeting.

There is created a metropolitan area planning and development commission in each area of this state having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census. The chairman of the county commission of the most populous county in an area so having a population of more than 1,000,000 shall, within ten days after July 1, 1971, or within 30 days after the publication of the first United States decennial census which reports that an

area has a population of more than 1,000,000, as the case may be, activate the commission to serve that area by convening a meeting of the members provided for by paragraphs (1) through (4) of subsection (a) of Code Section 50-8-84. (Code 1981, § 50-8-82, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-83. Powers, duties, and obligations of regional commission.

A commission shall be, for its area, a regional commission as defined in and with all the powers, duties, and obligations of a regional commission set forth in Article 2 of this chapter and any other law of general application pertaining to regional commissions on July 1, 2009; and in addition shall have all of the other powers, duties, and obligations set forth in this article. (Code 1981, § 50-8-83, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1989, p. 1317, § 6.23; Ga. L. 2008, p. 181, § 8/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” twice; substi-

tuted “regional commissions” for “regional development centers”; and substituted “July 1, 2009” for “July 1, 1989”.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan

planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

50-8-84. Composition of membership of commission; redistricting of areas removed from jurisdiction of existing commission.

(a) The members of a commission for an area shall consist of:

(1) The chairman of the board of commissioners of each county within the area;

(2) The mayor of the most populous municipality within the area;

(3) From each county within the area, except the most populous county within the area, the mayor of a municipality within such county, to be designated by majority vote of the mayors (except the mayor of the most populous municipality within the area) of all municipalities lying within such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county;

(4) From the most populous county within the area, the mayor of a municipality located within the northern half of such county elected by

majority vote of the mayors of all municipalities located within the northern half of such county and the mayor of a municipality located within the southern half of such county elected by a majority vote of the mayors of all municipalities located within the southern half of such county, provided that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area;

(5) A member of the legislative body of the most populous municipality lying within the area chosen by majority vote of the members of that legislative body; and

(6) Fifteen at-large members not holding elective or appointed public office and not employed by any of the political subdivisions of the area, who shall be elected as follows:

(A) Within ten days after a commission has been activated pursuant to Code Section 50-8-82 and within 90 days after the publication of a subsequent United States decennial census, the members of the General Assembly whose representative or senatorial districts lie wholly or partially within an area shall meet upon call by the Speaker of the House of Representatives and the President of the Senate and shall divide the area into 15 districts. Each district shall contain approximately the same population; shall consist of combinations of contiguous census tracts from the latest available United States decennial census; but may cross the boundary lines of political subdivisions; and

(B) Within ten days after the area has been so divided into districts, the public members of a commission shall meet upon call of the chairman of the county commission of the most populous county within its area and elect one resident of each district as a member of the commission.

(b) Any other provision of this article to the contrary notwithstanding, the General Assembly shall be authorized by local Act to remove any county within an area from the provisions of this article upon the recommendation of a majority of the full membership of the board of commissioners of any such county.

(c) Within 90 days after any area, county, or municipality is added to or removed from the jurisdiction of an existing commission under the provisions of paragraph (1) of Code Section 50-8-80 or subsection (b) of this Code section, the resulting area shall be redistricted and the 15 members at large shall be elected in accordance with paragraph (6) of subsection (a) of this Code section relative to redistricting after a United States decennial census. (Code 1981, § 50-8-84, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 1; Ga. L. 1988, p. 1834, §§ 2, 3; Ga. L. 1997, p. 442, §§ 2, 3.)

50-8-85. Terms of office; removal from office; filling of vacancies.

(a) The public members of a commission shall have terms of office concurrent with their respective terms of public office. Members at large of a commission shall serve for a term of four years, except that one-half (or if an odd number of members at large are elected to a commission, a majority of such members at large) shall serve an initial term (either upon activation of a commission or after a redistricting of a commission) of two years as designated by the public members at the time of election; provided, however, that the terms of all members at large shall terminate at the end of any calendar year during which redistricting of the area has occurred.

(b) The full terms of the members at large shall commence on January 1 of the year following the year in which they are elected except that the first members at large of a newly created commission shall have added to their term the period of time commencing with their election until the first January thereafter.

(c) Any member at large who moves his residence outside a district shall be removed from office by the commission. A commission may remove from office any member at large who has failed to attend the last three or more consecutive regular meetings of the commission. A member at large may be elected to two or more successive terms on a commission. If a member of the commission dies, resigns, is removed from office, or for any other reason ceases to be a member of the commission, his unexpired term shall be filled by the same persons and in the same manner as such member was originally elected to the commission pursuant to Code Section 50-8-84.

(d)(1) Except as provided in paragraph (2) of this subsection, upon the expiration of the term of office of a mayor of a municipality who has been designated by a majority vote of the mayors of all municipalities lying within a county in an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities lying within such county, and such mayors shall designate a mayor from their number as a successor member of the commission, provided that nothing herein shall prevent an incumbent mayor who has been elected to another term of public office from being redesignated as a member of the commission; provided, further, that if the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the applicable county.

(2) Upon the expiration of the term of office of the mayor of a municipality located within the northern half of the most populous county within an area, the chairman of the board of commissioners shall call a meeting of the mayors of all the municipalities located within the northern half of such county and such mayors shall designate a mayor

from their number as a successor member of the commission. Upon the expiration of the term of office of the mayor of a municipality located within the southern half of the most populous county within an area, the chairman of the board of commissioners of such county shall call a meeting of the mayors of all municipalities located within the southern half of such county and such mayors shall designate a mayor from their number as a successor member of the commission. Nothing in this paragraph shall prevent an incumbent mayor who has been elected to another term of office as mayor from being redesignated as a member of the commission. In the event the mayors of the municipalities eligible to vote on such matter fail to designate one of their number as a successor member within 45 days after a vacancy exists, one of their number shall be selected by a majority vote of the county commission of the most populous county in the area. (Code 1981, § 50-8-85, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1984, p. 653, § 2; Ga. L. 1997, p. 442, § 4.)

50-8-86. Quorum; votes equally weighted.

A quorum for taking action at a meeting of a commission may be set in such manner as the bylaws of the commission shall provide, but it shall not consist of less than one-half of the total number of authorized members of the commission. The vote of any member of the commission shall be equal to the vote of any other member in considering or acting upon any question, proposal, or other matter before the commission. (Code 1981, § 50-8-86, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-87. Chairman; election; powers and duties; salary and expense allowances; removal.

(a) The chairman of a commission shall be elected by the commission from among its members for a two-year term, but no person shall serve as chairman if, after his election to office, he ceases to be a member of the commission. A chairman may succeed himself.

(b) The chairman of a commission shall preside at all meetings of the commission. The chairman shall appoint all officers and committees of the commission, subject to the approval of the commission, and be responsible for carrying out all policy decisions of the commission. The chairman's salary and expense allowances shall be fixed by the commission.

(c) A chairman may be removed from office by the commission. (Code 1981, § 50-8-87, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-88. Election of officers; compensation of officers and members.

A commission shall elect such officers as it deems necessary for the conduct of its affairs, including a secretary and treasurer, who need not be

members of the commission, and shall be compensated as determined by the commission. Each member of a commission, other than the chairman, may be paid a per diem compensation not to exceed \$44.00 for each meeting which he attends and additional compensation for such other services as are specifically authorized by the commission, and may be reimbursed for his actual expenses. No commission member, other than the chairman, shall receive compensation in excess of \$2,400.00 per year. (Code 1981, § 50-8-88, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-89. Executive director; selection and appointment.

A commission shall appoint an executive director to serve at the pleasure of the commission as the principal operating administrator for the commission. An executive director shall be chosen from among the citizens of the nation at large and shall be selected on the basis of his training and experience. (Code 1981, § 50-8-89, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-90. Terms of employment of officers, employees, and agents; power to contract with private individuals; officers and employees to be public employees.

A commission may prescribe the compensation, benefits, and all terms and conditions of employment of its officers, employees, and agents. A commission may contract with private individuals or firms for professional services deemed necessary to carry out its responsibilities under this article. Officers and employees of a commission shall be public employees. Comparability with existing wage classifications, pay plans, and other benefits of political subdivisions in its area shall be considered by a commission when carrying out this Code section. (Code 1981, § 50-8-90, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-91. Establishment of advisory committees; appointment of members; compensation.

A commission may establish and appoint persons to advisory committees to assist the commission in the performance of its duties. Members of advisory committees shall serve without compensation but may be reimbursed for their reasonable expenses as determined by the commission. (Code 1981, § 50-8-91, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-92. Development guides; contents.

A commission shall prepare and adopt and from time to time amend, change, or repeal, after appropriate study and such public hearings as may be deemed necessary, comprehensive development guides for its area. The development guides shall consist of policy statements, goals, standards,

programs, and maps prescribing an orderly and economic development, public and private, of the area. The development guides shall be based upon and encompass physical, economic, and health needs of the area and shall take into consideration future development which may have an impact on the area including, but not limited to, such matters as land use not including zoning, water and sewerage systems, storm drainage systems, parks and open spaces, land needs and the location of airports, highways, transit facilities, hospitals, public buildings, and other community facilities and services. (Code 1981, § 50-8-92, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-93. Review of area plans; designation as official planning agency; responsibility to carry out assigned or delegated planning functions for an area.

(a) It is in the public interest and it is provided by this article that:

(1) A commission review each area plan prepared for use in an area by a political subdivision or by a public authority, commission, board, utility, or agency;

(2) Each commission be designated as the official planning agency for all state and federal programs to be carried out in the area; and

(3) A commission carry out such other planning functions for an area as may be assigned or delegated to the commission by other agencies or boards, public or private, and accepted by the commission.

(b) As set forth in Code Section 50-8-83, a commission shall be the planning and development commission for an area in accordance with Article 2 of this chapter.

(c) All powers, duties, obligations, and property vested in or imposed upon any metropolitan planning commission in an area are transferred to, imposed upon, and vested in the commission created by this article as the successor of such commission.

(d) A commission shall be designated for its area as the planning agency under 40 U.S.C.A. Section 461 and 40 U.S.C.A. Section 461(g), as amended, P.L. 89-117 (1965), and P.L. 90-448 (1968); 42 U.S.C.A. Section 3725, P.L. 90-351 (1968); 42 U.S.C.A. Section 246(b), P.L. 89-749, as amended, P.L. 90-174 (1967), and for comprehensive transportation studies required by 23 U.S.C.A. Sections 101, 134, P.L. 87-866 (1962); and 49 U.S.C.A. Section 1601, et seq. P.L. 88-365 (1964), as amended, and supplemented by administrative requirements of the United States Department of Transportation, and any similar law enacted before July 1, 1971. A commission is further granted all of the powers, duties, and authorities necessary to carry out its responsibilities and duties under such laws.

(e) A commission shall have power and authority to undertake such other planning functions within its area as may be assigned or delegated to

the commission by other agencies or boards, public or private, and for which the commission accepts responsibility. (Code 1981, § 50-8-93, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1998, p. 128, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “Sections” was substituted for “Section” preceding “101” in subsection (d).

U.S. Code. — 40 U.S.C. § 461, referred to in subsection (d), was repealed in 1981. 42

U.S.C. § 3725, also referred to in subsection (d), has been omitted. 49 U.S.C. § 1601 et seq., also referred to in subsection (d), formerly appeared as 49 U.S.C. App. § 1601 et seq., which was subsequently repealed and is now codified as 49 U.S.C. App. § 5301.

OPINIONS OF THE ATTORNEY GENERAL

Participation of county or municipality as member of Atlanta Regional Commission. — County or municipality may participate as a member of the Atlanta Regional Commission for the limited purposes of federal laws and regulations governing metropolitan

planning organizations while remaining a member of a regional development center other than the Atlanta Regional Commission so long as statutory processes and approvals are obtained. 2004 Op. Att’y Gen. No. 2004-1.

50-8-94. Submission by municipality and county of area plan; comment and recommendation; public hearing upon request for reconsideration of recommendation.

(a) Each municipality within an area and each county within an area shall submit to the commission for comment and recommendation thereon every area plan prepared by such municipality or county. The commission shall maintain all area plans in its files available for inspection by members of the public. No action shall be taken by any municipality or county to put an area plan into effect until 60 days have elapsed after its submission to the commission. Within ten days after submission, the commission shall notify each municipality or county which may be affected by the area plan submitted of the general nature of the plan, the date of submission, and the identity of the submitting municipality or county. Political subdivisions contiguous to the submitting municipality or county shall be notified in all cases by the commission. Within 30 days after receipt of such notice, a municipality or county may present its views to the commission.

(b) If, from its own investigation, from the views presented by a municipality or county affected by the area plans submitted, or otherwise, the commission finds that there are any inconsistencies between the area plan and the area’s development guides, the commission may recommend modification of the area plan in such manner as to be consistent with the area’s guides.

(c) A submitting municipality or county may request reconsideration of any recommendation by a commission at a public hearing. Such public hearing shall be held by the commission within 30 days after receipt of such request. Notice stating the time and place of each public hearing shall be mailed by the secretary of the commission, at least five days prior to the

hearing, to the submitting municipality or county, all affected municipalities and counties, appropriate state regulatory boards and agencies, and members of the commission.

(d) Within 30 days after a public hearing, the commission shall make its recommendations known to the submitting municipality or county, the affected municipalities and counties, and appropriate state regulatory boards and agencies.

(e) Nothing in this Code section shall limit or compromise the right of a municipality or county to establish and administer its own zoning laws and regulations. (Code 1981, § 50-8-94, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-95. Submission by public entity of area plan; review; public hearing upon request for reconsideration of recommendation.

(a) A commission shall review every area plan prepared for use within the area by a public authority, public commission, public board, public utility, or public agency. Each such area plan shall be submitted to the commission by the public authority, public commission, public board, public utility, or public agency preparing the plan before any action is taken to put the plan into effect.

(b) No action shall be taken to put any area plan into effect until 60 days have elapsed after its submission to the commission or until the commission finds and notifies the submitting public authority, public commission, public board, public utility, or public agency that the area plan is not inconsistent with its development guides, whichever first occurs. If, within 60 days after the date of submission, the commission finds that an area plan is inconsistent with its development guides, the commission may recommend modification of the area plan or such part thereof in such a manner as to be consistent with its development guides.

(c) A submitting public authority, public commission, public board, public utility, or public agency may request reconsideration of any recommendation of the commission at a public hearing. Such public hearing shall be held by the commission within 30 days of such request. Notice stating the time and place of a public hearing shall be mailed, at least five days prior to the hearing, to the submitting public authority, public commission, public board, public utility, or public agency; all affected municipalities and counties within the area; appropriate state regulatory boards and agencies; and members of the commission.

(d) Within 30 days of such public hearing, the commission shall make its recommendations known to the submitting authority, commission, board, utility, or agency, all affected municipalities and counties in the area, and appropriate state regulatory boards and agencies. (Code 1981, § 50-8-95, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-96. Commission to review all applications of governmental entities for state or federal loan or grant; procedure.

A commission shall review all applications of municipalities, counties, authorities, commissions, boards, or agencies within the area for a loan or grant from the United States, the State of Georgia, or any agency thereof if review by a region-wide agency or body is required by federal or state law, rule, or regulation. In each case requiring review, the municipality, county, authority, commission, board, or agency shall, prior to submitting its application to the United States or State of Georgia or agency thereof, transmit the same to the commission for its review. The comments of the commission shall then become a part of the application, to be appended thereto when finally submitted for the consideration of the United States, the State of Georgia, or any agency thereof. (Code 1981, § 50-8-96, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-97. Commission to engage in continuous program of research, study, and planning of matters affecting its area.

A commission shall engage in a continuous program of research, study, and planning of matters affecting its area including but not limited to:

- (1) Land use;
- (2) Transportation within the area, including highways, railroads, airports, streets, and mass transit;
- (3) The acquisition and financing of facilities for the disposal of solid waste material for the area and the means of financing such facilities;
- (4) The acquisition and financing of storm water drainage facilities for the area and the means of financing such facilities;
- (5) The acquisition and financing of suitable major parks and open spaces within and adjacent to the area;
- (6) The control and prevention of air and water pollution;
- (7) Environmental quality;
- (8) Law enforcement agencies and increased efficiency of the criminal justice systems in the area;
- (9) Planning for the provision of health facilities and services; and
- (10) The feasibility of the consolidation of common services of political subdivisions. (Code 1981, § 50-8-97, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-98. Determination of whether plan is area plan under Code Section 50-8-80; procedure; authorization to adopt bylaws, rules, and regulations.

(a) A commission shall have and exercise all power and authority which may be necessary or convenient to enable it to perform and carry out the duties and responsibilities imposed on it by this article.

(b) A commission shall have the authority to determine whether or not a plan is an area plan as defined by paragraph (2) of Code Section 50-8-80. Any member of the commission, governing body of a political subdivision or public authority, commission, board, utility, or agency whose plans may be area plans may request in writing that the commission determine whether a plan is an area plan as defined in paragraph (2) of Code Section 50-8-80. A commission shall make such determination within 15 days after such request and shall afford the requesting party the right to be heard prior thereto. The determination shall be in writing and shall state the basis therefor.

(c) A commission shall also be authorized to adopt bylaws and rules and regulations concerning all aspects of its functions and operations. Such bylaws, rules, and regulations shall be determinative and control all matters unless expressly contradicted or forbidden by other provisions of law. (Code 1981, § 50-8-98, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-99. Authorization to accept gifts, loans, and grants from governments and agencies.

In carrying out the purposes of this article, a commission shall be authorized to contract with, apply for, and accept gifts, loans, and grants from federal, state, or local governments, public agencies, semipublic agencies, or private agencies, to expend such funds, and to carry out cooperative undertakings or contracts with any such government or agency. (Code 1981, § 50-8-99, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1983, p. 3, § 39.)

50-8-99.1. Commission authorized to be contracting agent for certain local governments.

(a) For purposes of this Code section, the term “participating affected local government” means the governing body of a political subdivision which is or will be affected by a regional public project and which agrees to authorize the commission to act on its behalf as described in this Code section.

(b) In order to more efficiently coordinate and manage the planning, development, implementation, construction, management, and operation

of public projects which are regional, rather than purely local, in nature, the commission is authorized pursuant to this Code section to act as the contracting and coordinating agent for the participating affected local governments.

(c) Upon receiving written approval from each participating affected local government, the commission is authorized to act as the sponsor and coordinator of regional public projects. Upon receipt of such approval, the commission shall be authorized to enter into agreements with third parties as agent on behalf of the participating affected local governments. All agreements with third parties related to the planning, development, implementation, construction, management, or operation of the project shall be between the commission as agent for the participating affected local governments and such third parties. Upon contracting with third parties as the project sponsor, the commission shall then enter into subcontracts with the participating affected local governments in order to allocate appropriately the costs and benefits associated with the project, establish obligations and responsibilities of each of the participating affected local governments in connection therewith, delineate the relationships among the parties, and address any other matters which may be necessary or convenient in order to assure the successful completion and operation of the project.

(d) The commission shall not have the power to tax or to incur long-term indebtedness in connection with its authority under this Code section. The commission may make arrangements for the financing of any project described in this Code section if authorized by the participating affected local governments and if any resulting debt thereby created is authorized pursuant to the laws and Constitution of this state. Any such financing or credit shall be extended directly to the participating affected local governments, which shall assume all responsibility to repay same. No debt as authorized in this subsection shall be incurred in any manner so as to be a responsibility of an affected government unless that affected government's portion of that debt is first approved by a majority of the voters of such affected government voting in an election called by the governing authority of the affected government in the manner provided for calling and holding other special elections if such debt is required to be so approved pursuant to Article IX, Section V of the Constitution. (Code 1981, § 50-8-99.1, enacted by Ga. L. 1986, p. 1049, § 1; Ga. L. 1987, p. 3, § 50; Ga. L. 1988, p. 13, § 50.)

50-8-100. Annual report to General Assembly and to each political subdivision and supporting agency; contents.

On or before February 1 of each year, a commission shall report to the General Assembly of this state and to each political subdivision and supporting agency within its area. The report shall include:

(1) A statement of the commission's receipts and expenditures by category for the preceding calendar year;

(2) A budget for the calendar year during which the report is filed including an outline of its program for such year;

(3) An explanation of any development guides adopted for the area during the preceding calendar year;

(4) A listing of all applications for federal moneys made by political subdivisions within the area submitted to the commission for review during the preceding calendar year;

(5) A listing of area plans of political subdivisions submitted to the commission during the previous calendar year; and

(6) Recommendations of the commission for legislation affecting the area, including legislation affecting the organization and functions of the commission. (Code 1981, § 50-8-100, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-101. Books of account; annual population estimates; operating funds; annual program and budget.

(a) A commission shall keep books of account which shall be independently audited at least once in each full calendar year during which a commission functions. The auditor's report shall be presented to the governing body of each political subdivision within the area and to the General Assembly.

(b) Each year a commission shall make a separate estimate of the number of people who on the first day of April of such year resided within each county within the area and within the most populous municipality lying wholly or partially within the area specified on a county basis if the municipality lies in more than one county. Based on such population estimates, the governing body of each county in the area and of the said most populous municipality lying wholly or partially within the area shall, during the calendar year next following the year in which the population estimates were made, provide the commission with operating funds in the amount of \$5,000.00 or in the amount provided for each such political subdivision in the following schedule, whichever amount is greater:

(1) Every county within the area and the most populous municipality within the area shall each provide the commission with operating expenses of \$2,000.00; and

(2) In addition to the amount required under paragraph (1) of this subsection, every county within the area and the most populous municipality within the area shall each provide the commission with an amount

based upon the number of residents of that county or municipality, respectively, and determined as follows:

(A) Each county which has no portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in that county by the following per resident amounts based upon the appropriate calendar year specified:

2001	80¢
2002	90¢
2003	\$ 1.00

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(B) Each county which has some portion of the most populous municipality within its boundary shall provide an amount determined by multiplying the number of persons residing in the county but outside that most populous municipality by the per resident amount specified for the applicable calendar year under subparagraph (A) of this paragraph and shall also provide an amount determined by multiplying the number of persons residing in the county inside that most populous municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001	32¢
2002	36¢
2003	40¢

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(C) The most populous municipality shall provide an amount determined by multiplying the number of persons residing in the municipality by the following per resident amounts based upon the appropriate calendar year specified:

2001	48¢
2002	54¢
2003	60¢

Calendar years subsequent to 2003 in accord with subparagraph (D) of this paragraph.

(D) For calendar years subsequent to 2003, increases in the amounts specified in subparagraphs (A), (B), and (C) of this paragraph shall be based upon increases in the Average Annual Consumer Price Index for

All Urban Consumers for the Atlanta Metropolitan Statistical Area, hereafter referred to as CPI-U. Upon approval by the commission, the amount specified for calendar year 2003 in subparagraph (A) of this paragraph shall increase by 10¢ when the latest available CPI-U exceeds 110 percent of the CPI-U for the base year 2001. The commission may also approve additional 10¢ increases in the amount specified in subparagraph (A) of this paragraph whenever the latest available CPI-U exceeds 110 percent of the CPI-U that was the basis for the most recent increase in that amount. Each time the amount in subparagraph (A) of this paragraph increases by 10¢, then the amount in subparagraph (B) of this paragraph shall increase by 04¢ and the amount in subparagraph (C) of this paragraph shall increase by 06¢.

(c) After the first day of April but before the first day of September of each year, a commission shall make the necessary population estimates and compute the amount due from the governing body of each political subdivision in accordance with the formula set forth in subsection (b) of this Code section and certify such population estimates and other data to each such governing body.

(d) Before the fifteenth day of December of each year, a commission shall, at a meeting called for the purpose, adopt a program and budget for the next calendar year. A copy of this program and budget shall be forwarded to each political subdivision and each agency which is expected to contribute to the support of the commission during the next calendar year. If the aggregate amount to be provided by the participating political subdivisions in accordance with the formula set out in subsection (b) of this Code section is greater than is necessary for such budget, the amount to be provided by each political subdivision shall be reduced pro rata and each such political subdivision shall be notified accordingly.

(e) Each political subdivision required to contribute to the support of a commission by subsection (b) of this Code section shall, on or before the first day of each quarter of a calendar year, furnish 25 percent of the total amount to be provided by it during such year unless such political subdivision shall not have adopted its own operating budget by January 1 of such year, in which event it shall immediately after the adopting of its budget furnish the amounts then due to the commission under this Code section.

(f) The governing body of any political subdivision shall have authority during any year to provide funds to a commission in excess of the amount computed in accordance with subsection (b) of this Code section. (Code 1981, § 50-8-101, enacted by Ga. L. 1982, p. 2107, § 51; Ga. L. 1986, p. 1049, § 2; Ga. L. 1987, p. 555, § 1; Ga. L. 1989, p. 258, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 2001, p. 870, § 1.)

50-8-102. Submission of negative or unfavorable recommendation based upon stale data.

A commission shall not submit a negative or unfavorable recommendation which is based upon any data which has been accumulated for a period of time in excess of 24 months where more current data is available. (Code 1981, § 50-8-102, enacted by Ga. L. 1982, p. 2107, § 51.)

50-8-103. Determination of effective dates of certain Code sections by resolution of commission or by operation of law.

Notwithstanding any other provision of this article, a commission shall determine by resolution the timing and sequence of the assumption of such duties, powers, and obligations it may have under Code Sections 50-8-88, 50-8-89, and Code Sections 50-8-93 through 50-8-96 and such Code sections shall not become effective until the date specified in such resolution. However, all such Code sections shall become effective on January 1 of the year following the year in which a commission is created. (Code 1981, § 50-8-103, enacted by Ga. L. 1982, p. 2107, § 51.)

ARTICLE 5

RURAL ECONOMIC DEVELOPMENT

50-8-120. Short title.

This article shall be known and may be cited as the “Rural Economic Development Law.” (Code 1981, § 50-8-120, enacted by Ga. L. 1987, p. 1142, § 1.)

Administrative rules and regulations. — Rules and Regulations of the State of Georgia, Broadband rural initiative to develop Georgia’s economy, Official Compilation of the Georgia Grants of the OneGeorgia Authority, Chapter 413-7-1.

50-8-121. Rural economic development areas.

Each regional commission of this state, except the regional commission which is also the metropolitan area planning and development commission provided for in Article 4 of this chapter, shall constitute a rural economic development area for the purposes of this article. (Code 1981, § 50-8-121, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.24; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” twice.

50-8-122. Studies for proposed projects.

(a) The regional commission of each rural economic development area provided for in Code Section 50-8-121 may conduct a study for proposed major economic development projects within its respective rural economic development area. The study shall utilize the most recent economic information available.

(b) The proposed economic development projects must have a major impact on the economy of the area and particularly on the counties within each such area which have a per capita income of less than 70 percent of the United States average or a level of unemployment which is 35 percent or more higher than the state average.

(c) Funds for studies provided for in this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose. The department, in consultation with state agencies, local governments, regional commissions, local development organizations, and others, shall establish guidelines for the distribution of funds to carry out the studies provided for in this Code section and shall establish guidelines for the preparation of economic development project studies. Such guidelines shall be approved by the Board of Community Affairs. (Code 1981, § 50-8-122, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.25; Ga. L. 2008, p. 181, §§ 18, 24/HB 1216.)

The 2008 amendment, effective July 1, 2009, in subsection (a), substituted “regional commission” for “regional development center” in the first sentence; and, in subsection (c), substituted “regional commissions” for “regional development centers” in the second sentence.

50-8-123. Recommendation, approval, funding, and implementation of projects.

(a) Each rural economic development area may submit to the Department of Community Affairs proposed economic development projects by January 1, 1989. All proposed projects shall be endorsed by the appropriate local government and shall be evaluated for funding based upon rating and selection criteria prepared by the department in consultation with state agencies, local governments, regional commissions, local development organizations, and others. Such criteria shall be approved by the Board of Community Affairs.

(b) The department shall be authorized to expend funds available to the department under subsection (c) of this Code section to assist in the implementation of projects approved under the procedures outlined in this Code section. In carrying out the intent of this Code section, the Department of Community Affairs, state agencies, regional commissions, local governments, local development organizations, and other agencies or organizations receiving funding from the department are authorized to

incorporate other public or private funds into project budgets needed to assure the feasibility of proposed economic development projects authorized under this article.

(c) The funds necessary to carry out the provisions of this Code section shall come from funds appropriated to the Department of Community Affairs specifically for such purpose. (Code 1981, § 50-8-123, enacted by Ga. L. 1987, p. 1142, § 1; Ga. L. 1989, p. 1317, § 6.26; Ga. L. 2008, p. 181, § 24/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commissions” for “regional development centers” in the second sentences of subsections (a) and (b).

ARTICLE 6

OFFICE OF RURAL DEVELOPMENT; STATE ADVISORY COMMITTEE ON RURAL DEVELOPMENT

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga. L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been redesignated as Code Sections

50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been redesignated as Article 7 and the Code sections have been renumbered accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been renumbered accordingly.

PART 1

OFFICE OF RURAL DEVELOPMENT

50-8-140. Legislative intent; creation of office.

(a) It is the finding of the General Assembly that economic conditions in rural Georgia can be significantly improved through the creation of a focused and coordinated effort. It is further found that it is appropriate for the state to assist in enhancing economic opportunities and preserving the quality of life in rural communities.

(b) There is created within the Department of Community Affairs the Office of Rural Development in order to address effectively the needs, problems, and opportunities of Georgia’s rural areas. (Code 1981, § 50-8-140, enacted by Ga. L. 1988, p. 291, § 1.)

50-8-141. Duties and responsibilities.

The Office of Rural Development is charged and empowered to carry out the following duties and responsibilities:

(1) To serve as the clearing-house and point of contact in state government for information, data, resources, and assistance regarding rural development. The office shall either provide assistance or refer local governments, individuals, and others seeking help to the appropriate department or agency of the state or federal government or elsewhere where applicable;

(2) To conduct ongoing research and analyses of issues and policies affecting rural Georgia and provide advice and recommendations to the Governor and General Assembly on such issues and policies and to publish periodically information and data on the rural economy, including the preparation of the biennial rural economic development plan required in Part 2 of this article;

(3) To monitor and report on activities at the federal level affecting rural development to ensure a prompt and adequate state response to new or amended federal programs and initiatives;

(4) To serve as the Governor's principal adviser on rural development and to assist in coordinating the activities and services of state agencies in order to provide more effective services to rural Georgia;

(5) To supply coordination among state agencies, the University System of Georgia, and others on research and technical assistance related to rural development;

(6) To provide technical assistance to rural communities to facilitate the planning, design, and implementation of rural development initiatives; and

(7) To encourage the assistance of the private sector in effectuating rural development and revitalization. (Code 1981, § 50-8-141, enacted by Ga. L. 1988, p. 291, § 1.)

50-8-142. Employees.

The commissioner of community affairs may appoint employees as may be necessary to implement such powers and duties as are described by this article. The employees of the Office of Rural Development shall be unclassified positions for the purposes of the State Personnel Administration and shall serve at the pleasure of the commissioner of community affairs. The commissioner of community affairs shall describe the duties and fix the compensation for all such employees. (Code 1981, § 50-8-142, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" in the second sentence of this Code section.

PART 2

RURAL DEVELOPMENT COUNCIL

50-8-150. Creation of council; members; terms; officers; regular meetings; expenses; bylaws.

(a) There is created the Georgia Rural Development Council. The council shall advise the Governor on matters related to rural development and the preparation of a biennial rural economic development plan and any other such matters requested by the Governor. The council shall be composed of elected officials of municipalities, elected officials of counties, members of the General Assembly, and other persons knowledgeable about the community and economic development of rural areas appointed by the Governor. In making appointments to the council, the Governor shall ensure that members include representatives from throughout rural Georgia.

(b) Members of the council shall serve terms of office of two years and until their successors are appointed by the Governor and qualified.

(c) The officers of the council shall consist of the Governor, who shall serve as the chairperson, a vice chairperson, and a secretary. Except for the chairperson, the council shall elect officers at its July meeting or, if there is no July meeting, at the next scheduled meeting. The vice chairperson and secretary shall serve one-year terms until their replacements are selected and qualified.

(d) The council shall meet at least twice a year; however, the Governor may call additional special meetings.

(e) Membership on the council shall not preclude the member from holding other public office. Each member of the council shall receive the same per diem expense allowance as that received by members of the General Assembly for each day a councilmember is in attendance at a meeting of the council, plus reimbursement for actual transportation costs incurred while traveling by public carrier or the mileage allowance authorized for certain state officials and employees for the use of a personal automobile in connection with such attendance. The above shall be paid in lieu of any other per diem, allowance, or remuneration.

(f) The council shall adopt bylaws for the regulation of its affairs and conduct of its business. (Code 1981, § 50-8-150, enacted by Ga. L. 1988, p. 291, § 1; Ga. L. 1992, p. 988, § 1; Ga. L. 2005, p. 143, § 2/SB 144.)

ARTICLE 7

GRANTS PROMOTING E-85 GASOLINE

Effective date. — This article became effective May 29, 2007.

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga.L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been redesignated as Code Sections 50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been

redesignated as Article 7 and the Code sections have been renumbered accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been renumbered accordingly.

Editor's notes. — Ga. L. 1992, p. 2829, § 1, effective July 1, 1992, repealed the Code sections formerly codified at this article. The former article consisted of Code Sections 50-8-170 through 50-8-176, relating to community education and development, and was based on Ga. L. 1988, p. 1829, § 1.

50-8-170. Definitions; facilitating E-85 projects; implementation of grant program.

(a) As used in this Code section, the term:

(1) "Board" means the Board of Community Affairs.

(2) "Department" means the Department of Community Affairs.

(3) "E-85 gasoline" means a blend of ethanol and gasoline that by volume consists of not less than 70 percent nor more than 85 percent ethanol which meets the American Society of Testing and Materials (ASTM) D5798-99 Standard Specification for Fuel Ethanol for Automotive Spark-Ignition Engines.

(4) "E-85 project" means installing, replacing, or converting motor fuel storage and dispensing equipment at sites where motor fuel is stored and dispensed for retail sale such that the installed, replacement, or converted equipment shall be used exclusively for storing and dispensing E-85 gasoline for retail sale for a period of not less than five consecutive years.

(5) "Gasoline" has the meaning provided by Code Section 48-9-2.

(6) "Motor fuel" has the meaning provided by Code Section 48-9-2.

(7) "Motor fuel storage and dispensing equipment" means tanks, pumps, dispensers, pipes, hoses, tubes, lines, fittings, valves, filters, seals, covers, and other associated equipment used in storing and dispensing motor fuel for retail sale.

(8) "Retail sale" means the sale for consumption, and not for resale, at a retail outlet serving the motoring public.

(b) The General Assembly finds and declares that facilitating E-85 projects through a program established by the department would return a

substantial benefit to the state by promoting investment of private capital to provide improved air quality in this state through reduction of combustion of gasoline in motor vehicles; aid compliance with federal air quality standards; promote the use of alternative domestic fuels that reduce dependence on foreign petroleum supplies; and enable increased availability of motor fuels crucial to the state's economy, welfare, and public safety, which may be especially critical in times of natural disaster or international crisis.

(c) The department shall establish a grant program to fund the costs of E-85 projects, subject to availability of funds. The department shall enter into an intergovernmental contract with the Georgia Environmental Facilities Authority for purposes of developing, implementing, and administering such program and disbursing any grant moneys thereunder, and the authority is authorized to and shall develop, implement, and administer such program and disburse any grant moneys subject to the following minimum criteria:

(1) Each grant applicant shall submit a project plan that shall be subject to approval by the Georgia Environmental Facilities Authority;

(2) A grant for any approved project shall not exceed \$20,000.00 or 33 1/3 percent of the planned cost of the project, whichever is less, and the applicant shall be required to pay the remainder of the project cost. This paragraph shall not prohibit the applicant from using grants or loans from federal government or private sources to pay for such remainder of the project cost;

(3) Construction for any approved project shall begin not later than six months after the date of the grant;

(4) Any approved project shall be completed not later than one year after the date of the grant;

(5) A project shall be used for the purposes and period required for such project as specified in paragraph (4) of subsection (a) of this Code section; and

(6) Grant money for a project shall be refunded to the state with interest at the legal rate not later than two years after any failure to meet the requirements of paragraph (3), (4), or (5) of this subsection.

(d) The Georgia Environmental Facilities Authority shall adopt such rules and regulations as are reasonable and necessary to implement and administer the grant program established under this Code section.

(e) No grants shall be made under this Code section on or after July 1, 2009. (Code 1981, § 50-8-170, enacted by Ga. L. 2007, p. 644, § 1/SB 157.)

ARTICLE 8

REGIONAL ECONOMIC ASSISTANCE PROJECTS

Code Commission notes. — Three 1988 Acts added new articles to this chapter. Pursuant to Code Section 28-9-5 and the standard numbering system for the O.C.G.A., the Article 6 enacted by Ga. L. 1988, p. 291 has retained the Article 6 designation but the Code sections originally designated as Code Sections 50-8-130 through 50-8-140 have been redesignated as Code Sections 50-8-140 through 50-8-150. Article 6 as enacted by Ga. L. 1988, p. 1829 has been redesignated as Article 7 and the Code sections have been renumbered accordingly. Article 6 as enacted by Ga. L. 1988, p. 1913 has been redesignated as Article 8 and the Code sections have been renumbered accordingly.

Editor's notes. — The former article consisted of Code Sections 50-8-190 through 50-8-194 and was based on Code 1981, §§ 50-8-190 through 50-8-194, enacted by Ga. L. 1988, p. 1913, § 1; Ga. L. 1989, p. 1317, §§ 6.27, 6.28, and was repealed by Ga. L. 1988, p. 1913, § 1.

Ga. L. 1999, p. 1206, § 1, not codified by

the General Assembly, provides: "The General Assembly finds that large scale projects with multiple uses offer a unique opportunity for local government, state government, and the private sector to cooperate in producing growth and development in rural areas resulting in additional local tax revenue and providing employment opportunities of high caliber in tourism and hospitality, industries which are environmentally friendly and promote increased recreational opportunities and an enhanced quality of life for all Georgians. The General Assembly further finds that successful cooperation can provide benefits to the state through the overall economic impact of the project, improved local land use management, and strategic infrastructure investment and benefits to the private sector developer through the predictability of certain types of licenses and services. The General Assembly further finds that the location of these projects in rural areas could substantially advance efforts to improve the economic well-being of rural Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 83 Am Jur. 2d, Zoning and Planning, § 104 et seq.

50-8-190. Definitions.

As used in this article, the term:

(1) "Adjacent facility" means any facility adjoining a project that meets the requirements of a subparagraph of paragraph (3) of subsection (c) of Code Section 50-8-191 which is not met by the project and that is the subject of a reciprocal use agreement executed by the project developer and the owner or operator of the adjacent facility.

(2) "Certification of compliance" means a determination by the commissioner that the project meets all criteria to be designated a REAP.

(3) "Commissioner" means the commissioner of community affairs.

(4) "Full-service restaurant" means a restaurant which regularly serves two or more meals on each day it is open for business and is open for business at least six days weekly.

(5) "Notice of noncompliance" means a notice from the commissioner that the Department of Community Affairs has determined that the project has failed to comply with all requirements for designation as a REAP.

(6) "Regional Economic Assistance Project" or "REAP" means a project, including any adjacent facility covered by a reciprocal use agreement, which meets the criteria specified in Code Section 50-8-191 and which receives a certification of compliance from the commissioner. (Code 1981, § 50-8-190, enacted by Ga. L. 1999, p. 1206, § 2.)

Administrative rules and regulations. — Regional economic assistance projects, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Department of Community Affairs, Chapter 110-20-1.

50-8-191. Application for REAP designation; minimum criteria; reciprocal use agreements with adjacent facilities.

(a) The initial application for designation as a REAP shall be made to the municipal corporation or county in which the project will be located. Developers of projects to be located completely within the corporate limits shall apply to the municipal corporation; developers of projects to be located completely in the unincorporated part of a county shall apply to the county; developers of projects to be located partially within the corporate limits of a municipality and partially within the unincorporated part of a county and developers of projects to be located in more than one municipal corporation or more than one county shall apply to the county or municipality in which will be located all or a substantial portion of the restaurant and clubhouse improvements.

(b) The application for designation as a REAP shall include:

(1) A detailed description of the project, including all adjacent facilities which are subject to a reciprocal use agreement, and showing the scope and design;

(2) A map showing the boundaries of the project and showing the current zoning for each area to be included within the project. If the project includes a reciprocal use agreement with the owner or operator of an adjacent facility, the map shall show and include the adjacent facility; and

(3) A comprehensive economic and development impact study showing the benefits to be derived from the project.

(c) To comply with the minimum criteria for application for designation as a REAP, a project, in combination with any adjacent facility included by a reciprocal use agreement, shall:

(1) Be not less than 250 acres in size or be located on or adjacent to a lake of not less than 2,500 acres;

(2) Where required, have zoning which is appropriate to the planned uses and plans which are consistent with other land use regulations; and

(3) Provide for at least three of the following criteria:

(A) Include one or more regulation 18 hole golf courses, with a clubhouse providing food service, or have a commercial boat marina of not less than 300 boat slips, with a facility providing food service;

(B) Include a full-service restaurant with minimum seating for 75 or more persons;

(C) Include at least 100 residential units;

(D) Include at least 200 rooms for overnight stays;

(E) Include conference facilities with capacity for 150 participants;
or

(F) Be located in a county in which a state operated facility or authority provides services or products, or both, to the general public.

(d) The developer of a project which meets the requirements of paragraphs (1) and (2) of subsection (c) of this Code section and the requirements of two of the criteria set out in paragraph (3) of subsection (c) of this Code section may apply for designation as a REAP.

(e) If the project appears to meet the criteria set out in this Code section, the governing authority of the local government may by resolution approve the project and submission of the project application to the Department of Community Affairs for review and action. Upon a determination by the commissioner that the project will confer substantial benefits upon the local jurisdiction, application of not more than one of the criteria set forth in this Code section or the rules and regulations promulgated pursuant to this article may be waived. (Code 1981, § 50-8-191, enacted by Ga. L. 1999, p. 1206, § 2; Ga. L. 2002, p. 520, § 1.)

50-8-192. Certification of compliance; notices of noncompliance.

(a) Upon submission of a project after approval by the local government or governments, the Department of Community Affairs shall determine whether the project meets the criteria set out in Code Section 50-8-191 for designation as a REAP and complies with any rules and regulations promulgated by the Department of Community Affairs to implement this article. If the project meets such criteria and complies with such rules, the commissioner shall issue a certification of compliance. If the project does not meet such criteria and comply with such rules, the commissioner shall issue a notice of noncompliance.

(b) Each certification of compliance shall include a summary of the project's expected economic benefits for the short term and the long term

and any recommendations for adjustment of the project based upon local land use and comprehensive plans and infrastructure needs.

(c) Each notice of noncompliance shall include a list of deficiencies of the project. A developer of a project which has received a notice of noncompliance may resubmit an initial application for designation as a REAP to the local government or governments involved; such a resubmitted application shall include a copy of the notice of noncompliance and a detailed explanation of the project modifications designed to remedy the deficiencies. (Code 1981, § 50-8-192, enacted by Ga. L. 1999, p. 1206, § 2.)

50-8-193. State agencies encouraged to give certified projects priority in licensing and processing grants and loans.

The Department of Community Affairs shall certify that a project has received a certificate of compliance as a REAP to the Department of Natural Resources; the Department of Economic Development; the Department of Transportation; the Department of Revenue; the Department of Labor; the Georgia Environmental Facilities Authority; and any other state department, agency, or instrumentality which requests such certification. All state agencies, departments, and instrumentalities are encouraged to give priority in their permitting and licensing and in the processing of grants and loans to local governments for projects which have received a certification. (Code 1981, § 50-8-193, enacted by Ga. L. 1999, p. 1206, § 2; Ga. L. 2004, p. 690, § 40; Ga. L. 2008, p. 363, § 3/HB 1280.)

The 2008 amendment, effective July 1, 2008, deleted the subsection (a) designation; and deleted former subsections (b) and (c), which read: “(b) Where authorized by local ordinance or resolution, a certified project or facility located in a certified project shall be authorized to make sales of malt beverages, wine, or distilled spirits by the drink for consumption on the premises only, upon obtaining a license from the appropriate local authority and the state revenue commissioner. Where all of such sales at all times authorized in any other jurisdiction are not authorized by local ordinance or resolution, a certification of compliance as a REAP shall authorize the state revenue commissioner to issue a state license for the sale of malt beverages, wine, or distilled spirits by the drink for consumption on the premises only which are not authorized by local ordinance or resolution to the developer, owner, or operator of a certified project or facility located in a certified project, upon the payment of taxes and fees

and, except as provided in this article, compliance with the provisions of Title 3 and Department of Revenue regulations; provided, however, that notwithstanding any contrary provision of Title 3, such a licensee shall not be required to obtain a license from the local government until such time as such sales are authorized by local ordinance or resolution. Further, such a license for the sale of malt beverages, wine, or distilled spirits by the drink for consumption on the premises only may only be issued to such a developer, owner, or operator of a certified project or facility located in a certified project which is located wholly or partially in a municipal corporation or county in which the sale of malt beverages, wine, or distilled spirits by the drink for consumption on the premises only for which such license is sought is not otherwise authorized by local ordinance or resolution. Any license issued to a certified project or facility located in a certified project shall include the right to sell at all times otherwise authorized in any

other jurisdiction in this state malt beverages, wine, or distilled spirits for consumption on the premises only.

“(c) The local government or governments encompassing the facility or facilities for which a state license for the sale of malt beverages, wine, or distilled spirits by the

drink for consumption on the premises only is issued pursuant to this Code section, with or without the issuance of a local license, is authorized to levy and collect any local taxes on such alcoholic beverages as are otherwise authorized by law.”

50-8-194. Annual report by project developer.

For each project that has received a certification of compliance, the project developer shall submit an annual report to the Department of Community Affairs until the date planned for completion of all phases of the project. The developer’s report shall include a statement regarding the status of private investment, job creation, and construction schedules. The report shall also include information regarding the impact of the project on the local tax base, land use control, and the local government infrastructure for water, sewer, and transportation. (Code 1981, § 50-8-194, enacted by Ga. L. 1999, p. 1206, § 2.)

50-8-195. Promulgation of rules and regulations.

The Department of Community Affairs is authorized to promulgate rules and regulations to implement this article. (Code 1981, § 50-8-195, enacted by Ga. L. 1999, p. 1206, § 2.)

ARTICLE 9

RURAL FACILITIES ECONOMIC DEVELOPMENT

50-8-210. Short title.

This article shall be known and may be cited as the “Rural Facilities Economic Development Act.” (Code 1981, § 50-8-210, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-211. Legislative findings.

The General Assembly finds that in recent years rural Georgia has undergone a severe economic recession. It is evident that an investment in the economic situation of the state’s most distressed counties would result not only in an improvement in the quality of life for the citizens of those counties but also in the economic health of the entire state by increasing the state’s total economic growth. There is a serious need in those less developed counties for jobs and for many fundamental community facilities which are essential to an improved quality of life and an equal opportunity for economic development. The facilities needs of each less developed

county are individually specific and the citizens of each such community will as a part of the growth strategies program determine which needs are of most importance and worth to their community. Those economically distressed counties in many cases have exhausted all available funding resources in an attempt to help themselves but still do not have the economic ability to supply their facilities needs without substantial assistance from the state. It is therefore essential that the General Assembly provide funding assistance to make possible the construction of such facilities as each county may determine necessary, based on need, priorities, merit, and planning, to improve the quality of life and economic development in the most economically distressed counties of this state. (Code 1981, § 50-8-211, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-212. Definitions.

As used in this article, the term:

- (1) "Board" means the Board of Community Affairs.
- (2) "Commissioner" means the commissioner of community affairs.
- (3) "Comprehensive plan" means any plan by a county or municipality relating to the facilities needs of such county or municipality proposed or prepared pursuant to the minimum standards and procedures for preparation of comprehensive plans and for implementation of comprehensive plans established by the department in accordance with Article 1 of this chapter.
- (4) "Conflict" means any conflict, dispute, or inconsistency relating to a local plan or to the priority of the facilities needs in a local plan arising within a facilities development committee created pursuant to this article.
- (5) "Department" means the Department of Community Affairs.
- (6) "Facility" or "facilities" means a capital improvement designed to assist the less developed county in economic development including, but not limited to, the areas of transportation networks; water supply and treatment, sewer, waste-water treatment, and solid waste disposal facilities; public safety, fire protection, and emergency medical services; recreational, general government, and educational facilities; and libraries and other cultural structures.
- (7) "Less developed county" means any county designated pursuant to Code Section 50-8-213. Any area so designated shall, for the purposes of this article, be considered a less developed area for a period of not less than ten years.
- (8) "Local plan" means the plan of any less developed county and the municipalities lying therein which plan consolidates and prioritizes the

facilities needs contained in the various comprehensive plans of the less developed county and the municipalities lying therein.

(9) "Regional commission" means a regional commission created pursuant to the provisions of Article 2 of this chapter. (Code 1981, § 50-8-212, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted "commission" for "development center" twice in paragraph (9).

50-8-213. Designation and ranking of less developed counties.

(a) Not later than July 1, 1992, using the most current data available from the Department of Labor and the United States Department of Commerce, the commissioner shall rank and designate as less developed counties the lower 25 percent of all counties in this state using a combination of the following factors:

- (1) Highest unemployment rate for the most recent 36 month period;
- (2) Lowest per capita income for the most recent 36 month period;
- (3) Highest percentage of residents whose income is below the poverty level according to the most recent data available; and
- (4) Average weekly manufacturing wage according to the most recent data available.

(b) The commissioner shall be authorized to include in the designation provided for in subsection (a) of this Code section any county which, in the opinion of the commissioner of community affairs, undergoes a sudden and severe period of economic distress caused by the closing of one or more business enterprises located in such county. No designation made pursuant to this subsection shall operate to displace or remove any other county previously designated as a less developed area. (Code 1981, § 50-8-213, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-214. Membership of facilities development committee.

(a) There is created in each less developed county a facilities development committee to be composed as follows:

- (1) Three members appointed by the governing authority of the less developed county, one who is a member of such authority, and one who is from the private sector, and one who may but need not serve in the county government who shall serve as chairman of the committee; and
- (2) Two members appointed by the governing authority of each municipality lying within the less developed county, one who is a member of such authority and one who is from the private sector.

(b) All members shall reside within the less developed county or the municipality from which they are appointed and shall serve without compensation.

(c) Members shall serve terms of four years and may be reappointed. (Code 1981, § 50-8-214, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-215. Policies and procedures for facilities development committee.

(a) Each facilities development committee shall be known by the name of the county followed by the words "Facilities Development Committee."

(b) The commissioner shall establish policies and procedures by rule or regulation for the facilities development committees necessary for said committees to perform the duties provided by this article.

(c) Each regional commission within which a less developed county lies is authorized and directed to assist the facilities development committee in the development of a local plan. (Code 1981, § 50-8-215, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, "regional development center" in subsection 2009, substituted "regional commission" for tion (c).

50-8-216. Preparation of comprehensive local plan for less developed county.

(a) Each facilities development committee, in conjunction with the regional commission in which the less developed county is located, shall review the comprehensive plans for facilities needs prepared by the less developed county and each municipality lying therein pursuant to the provisions of Article 2 of this chapter and shall consolidate such comprehensive plans and prepare a local plan which prioritizes the combined facilities needs contained in each comprehensive plan. Such local plan may be amended from time to time pursuant to procedures established pursuant to subsection (b) of Code Section 50-8-215 to change the priorities or add new facilities. No facility shall be added to a local plan unless it has previously been made a part of the comprehensive plan of either the less developed county or a municipality lying therein pursuant to Article 2 of this chapter.

(b) Not later than the first day of July of the year following its creation, each facilities development committee shall provide the commissioner with the local plan of facility development developed pursuant to subsection (a) of this Code section. (Code 1981, § 50-8-216, enacted by Ga. L. 1991, p. 1712, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, "regional development center" in the first 2009, substituted "regional commission" for sentence of subsection (a).

50-8-217. Conflicts arising in preparation and submission of local plan.

In the event any conflict arises in or with the facilities development committee in the preparation and submission of a local plan, such conflict shall be resolved by the department in the manner provided by subsection (d) of Code Section 50-8-7.1. (Code 1981, § 50-8-217, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-218. Submission of local plan required; applications for grants.

No less developed county shall be eligible to receive a grant pursuant to this article until a local plan has been submitted. The commissioner shall provide by rule or regulation for the submission of local plans and the administration of grant applications and shall establish criteria for the types of facilities which would qualify for a grant under this article; provided, however, that such criteria shall realistically reflect the diverse facility needs of the various less developed counties for economic development. The commissioner shall submit such criteria to the General Assembly at the next regular session following July 1, 1991, and such criteria shall become effective only when ratified by joint resolution of the General Assembly. The power of the commissioner to promulgate such criteria shall be deemed to be dependent upon such ratification. (Code 1981, § 50-8-218, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-219. Review of local plan by commissioner.

(a) The commissioner shall review each plan to determine compliance with the criteria established pursuant to Code Section 50-8-218 and within 30 days from the date of submission of the plan shall approve or disapprove such plan. If the commissioner disapproves any plan, he shall provide a detailed reason for such recommendation and may suggest such changes to the plan as he deems appropriate.

(b) Any county may apply to the board for review of a disapproved plan. The board shall review each such plan and, within 30 days from the date of receipt of the commissioner's recommendation, shall either approve or disapprove the plan. If the plan is disapproved, the board shall provide the facilities development committee with a detailed reason for such disapproval and may suggest such changes to the plan as would result in the approval of the plan. (Code 1981, § 50-8-219, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-220. Matching grants for implementation of local plan.

(a) Each less developed county shall be entitled to receive from the state matching grants in an equal amount pursuant to this article for the

implementation of all or part of its local plan of facilities development as approved by the board in the order of priority as established in its local plan, subject to the provisions of Code Section 50-8-222 and subject to the availability of funds appropriated by the General Assembly for such grants.

(b) The governing authority of the less developed county shall be responsible for receiving such funds, which it shall maintain separate from all other county funds, and shall be responsible for implementing the plan of development.

(c) The governing authority of the less developed county shall be authorized to perform all functions necessary to implement the local plan of facilities development including, without limitation, purchasing or leasing property and entering into such contracts as may be necessary for such purpose.

(d) The funds granted pursuant to this Code section may be used as received or in conjunction with funds from any other available source, and they may be used in conjunction with any leasing authority granted to the less developed county or in conjunction with any revolving loan fund, or both, and may be used as matching funds for any federal or state grant. (Code 1981, § 50-8-220, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-221. Oversight of local plan by facilities development committee.

Each facilities development committee shall have oversight authority of each local plan of facilities development, and the governing authority of the less developed county shall submit annually to the department a detailed written progress report and full accounting of receipts and expenditures. (Code 1981, § 50-8-221, enacted by Ga. L. 1991, p. 1712, § 1.)

50-8-222. Distribution of appropriated funds; ratio of matching funds; submission of consolidated report and accounting.

(a) The department shall direct the distribution of any appropriated funds to the governing authority of the less developed county, as provided in Code Section 50-8-220; provided, however, that the less developed county and the municipalities within the less developed counties shall annually match any appropriated funds in a ratio of \$1.00 local funds for every \$9.00 appropriated funds.

(b) The commissioner shall consolidate the annual progress reports and accounting of funds submitted by the facilities development committees and submit a consolidated report and accounting to the General Assembly not later than December 31 of each year. (Code 1981, § 50-8-222, enacted by Ga. L. 1991, p. 1712, § 1.)

CHAPTER 9

GEORGIA BUILDING AUTHORITY

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Article 4**Hazardous Materials Removal Agency**

50-9-80 through 50-9-84. [Repealed].

Article 5**Purchase of Materials and Fixtures Based on Life Cycle Costs**

Sec.

50-9-100. "Life cycle costs" defined.

50-9-101. Purchase of materials and fixtures to be based on life cycle costs.

Article 6**Inventory of State Buildings**

50-9-110 and 50-9-111. [Repealed].

Cross references. — Georgia Building Authority (Penal), Ch. 3, T. 42.

Editor's notes. — By resolution (Ga. L. 1988, p. 2071), the General Assembly di-

rected the Georgia Building Authority to select a site on the grounds of the James H. "Sloppy" Floyd Veterans Memorial Building to erect the Vietnam Memorial.

ARTICLE 1**GENERAL PROVISIONS****50-9-1. Short title.**

This article and Article 2 of this chapter may be cited as the "Georgia Building Authority Act." (Ga. L. 1951, p. 699, § 1; Ga. L. 1967, p. 856, § 1.)

50-9-2. Definitions.

As used in this article and Article 2 of this chapter, the term:

(1) "Authority" means the Georgia Building Authority, the same being formerly known as the "State Office Building Authority." The change in the name of the authority shall not affect the rights, powers, privileges, or liabilities of the authority or of any person under the provisions of this article and Article 2 of this chapter.

(2) "Bonds" or "revenue bonds" means any bonds issued by the authority under this article and Article 2 of this chapter including refunding bonds.

(3) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights and easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining

the feasibility or practicability of the project; administrative expense and such other expenses as may be necessary or incident to the financing herein authorized, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under Article 2 of this chapter for such project.

(4) “Project” means and includes one or a combination of two or more of the following: buildings and facilities intended for use as offices and related uses and all structures, including electric, gas, steam, and water utilities and facilities of every kind and character deemed by the authority necessary or convenient for the efficient operation of any department, board, commission, or agency of the state. Without limiting the foregoing and without further determination of necessity or convenience, the word “project” also means and includes public parks and public parking facilities adjacent to the state capitol other than the facilities within or connected to state owned or state leased buildings; a parking facility on the “Old Incinerator” site acquired in 1983 by the State of Georgia from the City of Atlanta in Fulton County, Georgia; an executive mansion and buildings, structures, and facilities of every kind and character for use in conjunction with the mansion regardless of whether the buildings, structures, and facilities are physically connected with such mansion; and a Department of Transportation laboratory and buildings, structures, and facilities of every kind and character for use in conjunction with the laboratory, regardless of whether the buildings, structures, and facilities are physically connected with the laboratory, provided that the buildings, structures, and facilities are built and constructed on property owned by the Department of Transportation at Forest Park, Georgia.

(5) “Self-liquidating project” means any project or combination of projects if, in the judgment of the authority, the revenues to be derived by the authority from rentals of the project or projects will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of the project, projects, or combination projects. (Ga. L. 1951, p. 699, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 355, § 1; Ga. L. 1961, p. 587, §§ 1, 2; Ga. L. 1962, p. 660, § 1; Ga. L. 1964, p. 108, § 1; Ga. L. 1966, p. 205, § 1; Ga. L. 1967, p. 856, § 3; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 224, § 1; Ga. L. 2002, p. 1427, § 1; Ga. L. 2005, p. 100, § 2/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in paragraph (4), in the first sentence a comma was inserted following “steam”, and in the second

sentence hyphens were deleted between “state” and “owned” and between “state” and “leased” and a comma was inserted preceding “provided that”.

Law reviews. — For article, “Public Authorities: Legislative Panacea?,” see 5 J. of Pub. L. 387 (1956).

For note, “The Legal Nature of Public Purpose Authorities: Governmental, Private, or Neither,” see 8 Ga. L. Rev. 680 (1974).

JUDICIAL DECISIONS

Purpose of authority. — The building authority was created for the purpose of erecting buildings and other facilities to house agents and officials of the state government. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

Georgia Building Authority is arm or alter ego of state. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

50-9-3. Creation of authority; general powers; membership; officers; quorum; vacancy; expenses; rules.

There is created a body corporate and politic to be known as the Georgia Building Authority which shall be deemed to be an instrumentality of the state and a public corporation, and by that name, style, and title the body may contract and be contracted with, implead and be impleaded, and bring and defend actions in all courts. The authority shall consist of the same persons who comprise the State Properties Commission. Each member shall serve under the same terms and conditions as provided for in Code Section 50-16-32. The state property officer appointed by the Governor pursuant to Code Section 50-16-35 shall serve as executive director of the authority. The authority shall make rules and regulations for its own government. It shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this article and Article 2 of this chapter nor impair the obligations of any contracts existing under this article and Article 2 of this chapter. (Ga. L. 1951, p. 699, § 2; Ga. L. 1967, p. 856, § 2; Ga. L. 1988, p. 426, § 1; Ga. L. 2005, p. 100, § 3/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, a duplicate “the” was deleted preceding “same persons” in the second sentence.

50-9-4. Authority assigned for administrative purposes.

The authority is assigned to the State Properties Commission for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1972, p. 1015, § 416; Ga. L. 2005, p. 100, § 4/SB 158.)

50-9-5. General powers.

The authority shall have the powers:

- (1) To have a seal and alter the same at pleasure;

(2) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real and personal property of every kind and character for its corporate purposes;

(3) To acquire in its own name by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation, in accordance with any and all laws applicable to the condemnation of property for public use, real property or rights of easements therein or franchises necessary or convenient for its corporate purposes and to use the same so long as its corporate existence shall continue and to lease or make contracts with respect to the use of or disposal of the same in any manner it deems to the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this chapter except from the funds provided under the authority of this chapter; and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the action or proceeding as may be just to the authority and to the owners of the property to be condemned. No property shall be acquired under this chapter upon which any lien or other encumbrance exists unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of the lien or encumbrance; and if the authority shall deem it expedient to construct any project on lands which are a part of the real estate holdings of the state, the Governor is authorized to execute for and on behalf of the state a lease of the lands to the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years. If the authority shall deem it expedient to construct any project on any other lands the title to which shall then be in the state, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority;

(4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys, and fix their compensation and to serve as financial adviser and agent to other state authorities;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which it causes to be erected or acquired; and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the authority upon such terms and for such purposes as they deem advisable. Without limiting the generality of the above, authority is specifically granted to any department, board, commission, agency, or appellate court of the state to enter into contracts and lease agreements for the use or concerning the use of any structure, building, or facilities or a combination of any two or more structures, buildings, or facilities of the

authority for a term not exceeding 50 years; and any department, board, commission, or agency of the state may obligate itself to pay an agreed sum for the use of the property so leased and also to obligate itself as part of the lease contract to pay the cost of maintaining, repairing, and operating the property leased from the authority;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects, as defined in Code Section 50-9-2, to be located on property owned by or leased by the authority, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority or from such proceeds and any grant from the United States or any agency or instrumentality thereof;

(7) To accept loans or grants of money or materials or property of any kind from the United States or any agency or instrumentality thereof upon such terms and conditions as the United States or the agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes and to issue negotiable revenue bonds payable solely from funds pledged for that purpose and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions, which is not in conflict with the Constitution and laws of this state; and

(10) To do all things necessary or convenient to carry out the powers expressly given in this chapter. (Ga. L. 1951, p. 699, § 4; Ga. L. 1967, p. 856, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 224, § 2; Ga. L. 1985, p. 745, § 1; Ga. L. 1991, p. 970, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2002, p. 1427, § 2; Ga. L. 2005, p. 100, § 5/SB 158.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 36 et seq. **C.J.S.** — 81A C.J.S., States, §§ 259, 437, 443 et seq.

50-9-6. Authorization for projects and facilities on Confederate Soldiers' Home property.

In addition to the powers and authority granted under this article and Article 2 of this chapter, the authority shall be authorized and empowered to construct, operate, and maintain self-liquidating projects and facilities for the Department of Public Safety on the property of the state known as the Confederate Soldiers' Home property located in Fulton County, under the powers, methods, and procedures provided in such articles. (Ga. L. 1955, p. 585, § 1.)

50-9-7. Authorization for state archives building.

In addition to the powers and authority granted under this article and Article 2 of this chapter, the authority shall be authorized and empowered to construct, operate, and maintain under this article and Article 2 of this chapter as a project thereunder a state archives building on property owned or acquired by the state. (Ga. L. 1960, p. 192, § 2.)

50-9-8. Charges and leases for use of projects.

(a) The authority is authorized to fix rentals and other charges which any department, board, commission, or agency of the state, governmental subdivisions thereof, or other persons, firms, or corporations shall pay to the authority for the use of each project, or part thereof or combination of projects, and to charge and collect the same and to lease and make contracts with any department, board, commission, or agency of the state with respect to the use by an institution or unit under its control of any project or part thereof. Such rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or projects for which a single issue of revenue bonds is used, as to provide a fund sufficient with other revenues of the project or projects, if any, to pay:

(1) The cost of maintaining, repairing, and operating the project or projects, including reserves for extraordinary trust indentures, unless such cost is otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project or projects for water, light, sewer, and other services furnished by other facilities like such institution; and

(2) The principal of the revenue bonds and the interest thereon as the same becomes due.

(b) The rentals contracted to be paid by the state or any department, agency, or institution of the state to the authority under leases entered upon pursuant to this article and Article 2 of this chapter shall constitute obligations of the state for the payment of which the good faith of the state is pledged. The rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of this state. It shall be the duty of the state or any department, agency, or institution of the state to see to the punctual payment of all such rentals.

(c) In the event of any failure or refusal on the part of lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this article and Article 2 of this chapter, the authority may enforce performance by any legal or equitable process against lessees, and consent is given for the institution of any such action.

(d) The authority shall be permitted to assign any rental due it by lessees to a trustee or paying agent as may be required by the terms of any trust

indenture entered into by the authority. (Ga. L. 1951, p. 699, § 27; Ga. L. 1961, p. 587, § 4; Ga. L. 1964, p. 108, § 3; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 264, 265.

50-9-9. Disruptions of state employees; employment of security guards to protect property.

(a) In that it has been previously declared by state law that the use of the capitol building and grounds shall be limited to departments of state government and to state and national political organizations and for no other purposes unless specifically authorized by law and in that the employees of the departments of state government, and of state agencies, authorities, commissions, boards, bureaus, and other state entities located in the capitol building and other state buildings are engaged in the business of the citizens of the state and should not be unreasonably interrupted in the performance of their public duties, it is, therefore, in the best interest of the state and its citizens that a public policy against such unreasonable disruptions of state employees in the performance of their official duties be declared, and it is in this Code section so declared.

(b) Without the express written consent of the director of the Georgia Building Authority, his designee, or his successor in office first having been received and except as otherwise provided by state law, it shall be illegal for any person, firm, group, organization, or other entity to beg, panhandle, solicit, or to sell goods, wares, or any other objects or services within any buildings or on the grounds, sidewalks, or other ways owned by or under the control of the state, its agencies, authorities, commissions, boards, bureaus, or other state entities.

(c) Any person who violates subsection (b) of this Code section shall be guilty of a misdemeanor.

(d) The authority or its legal successor shall establish the rules and regulations for and carry out the implementation of this Code section.

(e) Notwithstanding anything contained in this Code section or elsewhere, subsections (a) and (b) of this Code section shall be applicable only to the buildings, facilities, and improvements adjacent to the state capitol and shall not be applicable to persons, firms, organizations, corporations, or other entities doing business with the Department of Administrative Services or the activities in relation thereto; and this Code section shall be permissive in nature.

(f) The authority shall be authorized to employ security guards known as the Georgia Building Authority Police to keep watch over and protect the properties of the authority and such other properties as may be adminis-

tered by, or as may be directed by, the authority. The Georgia Building Authority Police employed as provided by this Code section shall be employees of and compensated by the authority. The Georgia Building Authority Police employed pursuant to this Code section shall wear such insignia and uniforms and carry such identification as prescribed by the authority and shall be authorized to carry weapons and, while in the performance of their duties, shall have the same powers of arrest, shall have the same powers to enforce law and order, and shall be authorized to exercise such powers and duties as are authorized by law for security guards of the Security Guard Division of the Department of Public Safety. (Ga. L. 1969, p. 233, § 1; Ga. L. 1975, p. 885, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 554, § 1.)

Cross references. — Declaration that use of capitol building and grounds shall be limited to departments of state government and to state and national political organizations, § 50-16-4. Arrest powers of janitors and watchmen employed by keeper of public buildings and grounds, § 50-16-6. Further provisions regarding duties of security guards of authority and of Georgia State Patrol and Georgia Bureau of Investigation

to deny persons entrance to and to remove persons from state buildings and property, § 50-16-14. Penalty for failure to vacate public property or building when so requested, § 50-16-16.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “bureaus” in subsections (a) and (b) and a comma was deleted following “other ways” in subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Jurisdiction of Georgia Building Authority Police. — Jurisdiction of the Georgia Building Authority Police extends to properties of the Authority, those administered by the Authority, and in the cases of actual or imminent threat of harm or disruption, to any property or building utilized by the state or the state’s agencies. 1992 Op. Att’y Gen. No. 92-6.

Sales incidental to free speech activity. — The sale of goods, wares, or other objects,

when incidental and collateral to free speech activity otherwise permitted in a designated public forum may not be prohibited under the Buildings and Grounds Policies of the Georgia Building Authority or O.C.G.A. § 50-9-9(b). However, such activity is subject to existing time, place, and manner regulations contained in the policies, as well as other statutory provisions. 1993 Op. Att’y Gen. No. 93-8.

RESEARCH REFERENCES

ALR. — Validity of regulation against solicitation in street for patronage of taxicabs, 42 ALR 282.

Validity, construction, and application of statute or ordinance prohibiting solicitation

of passers-by in street in front of place of business, 139 ALR 1197.

Laws regulating begging, panhandling, or similar activity by poor or homeless persons, 7 ALR5th 455.

50-9-10. Rules and regulations for operation of projects.

It shall be the duty of the authority to prescribe rules and regulations for the operation of each project or combination of projects constructed under

this article and Article 2 of this chapter, including rules and regulations to ensure maximum use or occupancy of each such project. (Ga. L. 1951, p. 699, § 28.)

50-9-11. Acceptance of grants and contributions.

The authority, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of revenues, rents, and earnings derived under this chapter, shall have authority to accept from any federal agency grants for or in aid of the construction of any project or for the payment of bonds and to receive and accept contributions from any source of either money or property or other things of value to be held, used, and applied only for the purposes for which such grants or contributions may be made. (Ga. L. 1951, p. 699, § 25.)

50-9-12. Moneys received deemed trust funds.

All moneys received pursuant to the authority of this article and Article 2 of this chapter, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed trust funds to be held and applied solely as provided in this article and Article 2 of this chapter. (Ga. L. 1951, p. 699, § 26.)

50-9-13. Exemption from taxation.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this article and Article 2 of this chapter. This state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the buildings erected or acquired by it or any fees, rentals, or other charges for the use of such buildings or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. (Ga. L. 1951, p. 699, § 21; Ga. L. 1982, p. 3, § 50.)

JUDICIAL DECISIONS

Items exempt from taxation. — Authority is exempt from paying taxes on state-derived revenues as well as on the authority's other property. *McDevitt & St. Co. v. Georgia Bldg. Auth.*, 343 F. Supp. 1238 (N.D. Ga. 1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 280, 281. 328 et seq., 355, 357, 437, 443 et seq. 84 C.J.S., Taxation, § 303.

C.J.S. — 81A C.J.S., States, §§ 260 et seq.,

50-9-14. Jurisdiction and venue of actions.

Any action to protect or enforce any rights under this article and Article 2 of this chapter shall be brought in the Superior Court of Fulton County, and any action pertaining to validation of any bonds issued under this article and Article 2 of this chapter shall likewise be brought in such court which shall have exclusive, original jurisdiction of such actions. (Ga. L. 1951, p. 699, § 22.)

Law reviews. — For note discussing venue problems in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

JUDICIAL DECISIONS

Cited in M.A.R.T.A. v. McCain, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 77 Am. Jur. 2d, Venue, § 4.

C.J.S. — 92A C.J.S., Venue, §§ 16, 51.

50-9-15. Provisions supplemental.

The Code sections of this article and Article 2 of this chapter shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any other powers. (Ga. L. 1951, p. 699, § 29.)

50-9-16. Liberal construction of provisions.

This article and Article 2 of this chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof. (Ga. L. 1951, p. 699, § 30.)

JUDICIAL DECISIONS

Cited in McDevitt & St. Co. v. Georgia Bldg. Auth., 343 F. Supp. 1238 (N.D. Ga. 1972).

50-9-17. Transferred authorities.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Building Authority as set forth in Code Section 50-9-2.

(2) “Transferred authorities” means the Georgia Building Authority (Markets) set forth in Article 1 of Chapter 10 of Title 2, the Georgia Building Authority (Hospital) set forth in Article 2 of Chapter 7 of Title 31, the Georgia Building Authority (Penal) set forth in Chapter 3 of Title 42, and the Agency for Removal of Hazardous Materials set forth in Article 4 of Chapter 9 of Title 50, as each entity existed as of June 30, 2008.

(b) Beginning July 1, 2008, all functions, duties, responsibilities, and obligations of the transferred authorities shall belong to the authority. The authority shall also succeed to the rights, claims, remedies, securities, and any other debt or obligation owing to the transferred authorities.

(c) The authority shall be substituted for the transferred authorities on any bonds, claims, causes of action, contracts, leases, agreements, or other indebtedness or obligations of the transferred authorities. Contracts held by the transferred authorities shall be considered contracts of the authority, and any rights of renewal, prerogatives, benefits, and rights of enforcement under such contracts shall also be transferred to the authority.

(d) Appropriations for functions transferred from the transferred authorities to the authority may be transferred as provided in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed for such transferred functions shall likewise be transferred to the authority. Upon the effective date of the transfer, all personnel positions authorized for the transferred authorities shall be transferred to the authority and all employees whose positions are transferred to the authority shall become employees of the authority in the unclassified service as provided in Code Section 45-20-6.

(e) All assets, moneys, properties both tangible and intangible, and other valuable instruments and consideration belonging to the transferred authorities on the date of transfer shall become the property and assets of the authority.

(f) Rules and regulations previously adopted by the transferred authorities shall remain in full force and effect as rules and regulations of the authority until amended, repealed, or superseded by action of the authority. (Code 1981, § 50-9-17, enacted by Ga. L. 2008, p. 224, § 5/SB 130.)

Effective date. — This Code section became effective July 1, 2008.

ARTICLE 2

REVENUE BONDS

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

50-9-30. Issuance authorized; amount; interest; redemption.

The authority, or any authority or body which has or which may in the future succeed to the powers, duties, and liabilities vested in the authority created in Article 1 of this chapter, shall have power and is authorized at one time, or from time to time, to provide by resolution for the issuance of negotiable revenue bonds in the sum not to exceed \$59 million outstanding at any one time of the authority for the purpose of paying all or any part of the cost as defined in Code Section 50-9-2 of any one or combination of projects. The principal and interest of the revenue bonds shall be payable solely from the special fund provided in Code Section 50-9-42 for such payment. The bonds of each issue shall be dated; shall bear interest at the lowest obtainable rate, payable in such medium of payment as to both principal and interest as may be determined by the authority; and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds. (Ga. L. 1951, p. 699, § 5; Ga. L. 1953, Jan.-Feb. Sess., p. 355, § 2; Ga. L. 1955, p. 585, § 2; Ga. L. 1961, p. 587, § 3; Ga. L. 1962, p. 660, § 2; Ga. L. 1963, p. 422, § 1; Ga. L. 1972, p. 247, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 13, 36, 38.

C.J.S. — 81A C.J.S., States, §§ 349 et seq., 368, 437, 443.

50-9-31. Form, denomination, place of payment, registration.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest. (Ga. L. 1951, p. 699, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 12, 21.

C.J.S. — 81A C.J.S., States, §§ 442, 449 et seq.

50-9-32. Valid signatures, seal, attestation.

In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be an officer before the delivery of the bonds, the signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until the delivery. All such bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of the bonds shall be duly authorized or hold the proper office, although at the date of the bonds the persons may not have been so authorized or shall not have held such office. (Ga. L. 1951, p. 699, § 7.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 170, 171.

C.J.S. — 11 C.J.S., Bonds, § 10. 81A C.J.S., States, §§ 441, 442.

50-9-33. Negotiable instruments; exempt from taxation.

All revenue bonds issued under this article and Article 1 of this chapter shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state. The bonds and the income therefrom shall be exempt from all taxation within the state. (Ga. L. 1951, p. 699, § 8.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 230. 71 Am. Jur. 2d, State and Local Taxation, § 278.

C.J.S. — 11 C.J.S., Bonds, § 63. 81A C.J.S., States, §§ 446, 447. 84 C.J.S., Taxation, § 304.

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 ALR 510.

50-9-34. Manner and price of sale.

The authority may sell the bonds in such manner and for such price as it may determine to be for the best interests of the authority. (Ga. L. 1951, p. 699, § 9; Ga. L. 1960, p. 192, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 195. **C.J.S.** — 81A C.J.S., States, § 451 et seq.

50-9-35. Proceeds to be used for project costs; disbursed under restrictions; additional bonds authorized to provide for deficit; surplus to be paid into fund.

The proceeds of the bonds shall be used solely for the payment of the cost of the project or combined project and shall be disbursed upon requisition or order of the chairman of the authority under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture may provide. If the proceeds of the bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined project, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of the deficit, which unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds are issued, the surplus shall be paid into the fund provided in Code Section 50-9-42 for the payment of principal and interest of such bonds. (Ga. L. 1951, p. 699, § 10; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 346. **C.J.S.** — 81A C.J.S., States, §§ 437, 443 et seq.

50-9-36. Interim certificates and temporary bonds authorized.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter. (Ga. L. 1951, p. 699, § 11; Ga. L. 1994, p. 97, § 50.)

50-9-37. Replacement of mutilated or lost bonds.

The authority may also provide for the replacement of any bond which becomes mutilated or is destroyed or lost. (Ga. L. 1951, p. 699, § 12.)

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Lost and Destroyed Instruments, § 3. **C.J.S.** — 54 C.J.S., Lost Instruments, § 3 et seq.

50-9-38. No other conditions precedent; issuance for combination of projects authorized; passage and effective date of resolution.

The revenue bonds may be issued without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this article or Article 1 of this chapter. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this article or Article 1 of this chapter shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members. (Ga. L. 1951, p. 699, § 13; Ga. L. 1982, p. 3, § 50.)

50-9-39. Not debt or pledge of credit of state; bonds to contain recital of provisions.

Revenue bonds issued under this article and Article 1 of this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state, but the bonds shall be payable solely from the fund provided for in Code Section 50-9-42; and the issuance of the revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for the payment. All such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section; provided, however, that such funds as may be received from state appropriations or from any other source are declared to be available to any department, board, commission, or agency of the state and may be used for the performance of any lease contract entered into by such department, board, commission, or agency of the state. (Ga. L. 1951, p. 699, § 14.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 13. **C.J.S.** — 81A C.J.S., States, §§ 449, 450.

50-9-40. Trust indentures as security; provisions.

In the discretion of the authority, any issue of the revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. The trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority. Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing

the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys and may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or the trust indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued. It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority. The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders. All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by the indenture. (Ga. L. 1951, p. 699, § 15.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 177. **C.J.S.** — 81A C.J.S., States, §§ 439, 448.

50-9-41. Authority to provide for payment of proceeds to person or agency as trustee.

The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who or any agency, bank, or trust company which shall act as trustee of such funds and shall hold and apply the same to the purposes hereof, subject to such regulations as this article and Article 1 of this chapter and the resolution or trust indenture may provide. (Ga. L. 1951, p. 699, § 16.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 177. **C.J.S.** — 81A C.J.S., States, §§ 437, 443 et seq.

50-9-42. Sinking fund; pledge and allocation of funds to pay principal and interest.

The revenues, rents, and earnings derived from any particular project or combined project or any and all funds from any source received by any department, board, commission, or agency of the state and pledged and allocated by it to the authority as security for the performance of any lease or leases or any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued unless otherwise pledged and allocated, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or in the trust instrument may provide; and such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

- (1) The interest upon the revenue bonds as the interest falls due;
- (2) The principal of the bonds as the same falls due;
- (3) The necessary charges of paying agents for paying principal and interest; and
- (4) Any premium upon bonds retired by call or purchase as hereinabove provided.

The use and disposition of the sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in the resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another. Subject to the resolution authorizing the issuance of the bonds or in the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds; and any such bonds so purchased or redeemed shall immediately be canceled and shall not again be issued. (Ga. L. 1951, p. 699, § 17; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 346, 354. **C.J.S.** — 81A C.J.S., States, §§ 383 et seq., 439 et seq.

50-9-43. Rights and remedies of bondholders.

Any holder of revenue bonds or interest coupons issued under this article, any receiver for such holders, or indenture trustee, if there is any,

except to the extent the rights herein given may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the state or granted hereunder or under such resolution or trust indenture and may enforce and compel performance of all duties required by this article or Article 1 of this chapter or by resolution or trust indenture, to be performed by the authority, or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, any such holder, receiver, or indenture trustee shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the authority may possess against the state or any department, agency, or institution of the state and, in the pursuit of its remedies as subrogee, may proceed either at law or in equity by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which the individual, receiver, or trustee is representative. No holder of any such bond or receiver or indenture trustee thereof shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state; provided, however, any provision of this article or Article 1 of this chapter or any other law to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including, without being limited to, mandamus, to enforce compliance by the appropriate public officials of Article VII, Section IV of the Constitution of this state; and permission is given for the institution of any such proceedings to compel the payment of lease obligations. (Ga. L. 1951, p. 699, § 18; Ga. L. 1964, p. 108, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 2002, p. 415, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 416. **C.J.S.** — 81A C.J.S., States, § 440.

50-9-44. Refunding bonds.

The authority is authorized to provide by resolution for the issue of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this article and Article 1 of this chapter and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect

to the same shall be governed by this article and Article 1 of this chapter insofar as the same may be applicable. (Ga. L. 1951, p. 699, § 19.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 223, 225. **C.J.S.** — 81A C.J.S., States, §§ 454, 455.

50-9-45. Authorized investment and deposit securities.

The bonds authorized by this article and Article 1 of this chapter are made securities in which all public officers and bodies of this state and all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies and other persons carrying on a banking business; all administrators, guardians, executors, trustees and other fiduciaries, and all other persons who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state may be authorized. (Ga. L. 1951, p. 699, § 20.)

50-9-46. Validation; parties defendant to action; judgment final and conclusive.

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law." The petition for validation shall also make party defendant to such action any authority, subdivision, instrumentality, or agency of the state which has contracted with the authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated; and such authority, subdivision, instrumentality, or agency shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court and the validity of the terms thereof determined and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and any authority, subdivision, instrumentality, or agency contracting with the authority. (Ga. L. 1951, p. 699, § 23; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 318 et seq., 436. **C.J.S.** — 11 C.J.S., Bonds, § 107. 81A C.J.S., States, §§ 441, 442.

50-9-47. Interests and rights of bondholders not to be adversely affected; provisions constitute contract.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority or of its officers, employees, or agents or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds; and no other entity, department, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interests and rights of the holders of the bonds, nor will the state itself so compete with the authority. This article and Article 1 of this chapter shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under the provisions hereof, shall constitute a contract with the holders of the bonds. (Ga. L. 1951, p. 699, § 24.)

ARTICLE 3

EXECUTIVE CENTER FINE ARTS COMMITTEE

50-9-60. Creation of committee; membership.

There is created as a division and arm of the Georgia Building Authority the Executive Center Fine Arts Committee, to be composed of nine members appointed by the Governor. No employee of the state nor any member of the General Assembly shall be eligible for appointment as a member of the committee. All members shall be deemed members at large charged with the responsibility of serving the best interests of the state as a whole. (Ga. L. 1975, p. 212, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following "Authority" in the first sentence.

50-9-61. Terms of members; appointment; vacancies; honorary chairman; advisory groups; no compensation for services or expenses; reimbursement from private funds.

Of the members first appointed under this article, three shall be appointed for terms of one year, three for terms of three years, and three for terms of five years. After the original appointment, each subsequent appointment shall be for terms of five years. All vacancies shall be filled for the balance of the unexpired term in the same manner as the original

appointment. The spouse of the Governor shall be honorary chairman of the committee. The committee shall elect its chairman for a term of three years. The chairman may appoint other advisory and cooperative groups, who may not necessarily be members of the committee. Members of the committee shall not receive any compensation for their services, nor shall they receive any per diem, travel, or expense allowance from any state funds whatsoever. Members of the committee may, however, be reimbursed for their actual expenses from private funds donated for such purpose. (Ga. L. 1975, p. 212, § 1.)

50-9-62. Powers and duties.

The committee shall have the following powers and responsibilities and shall perform the following duties:

(1) Promote a greater understanding and awareness of the history and significance of the executive mansion;

(2) Take leadership in guiding the development of research and publications on the history and significance of the executive mansion, thus establishing a continuity of effort in this area;

(3) Encourage, approve, and accept contributions and bequests and gifts or loans of furniture, works of art, memorabilia, and other personal property for its use in carrying out the purposes of the committee and its powers and responsibilities;

(4) Purchase appropriate period furnishings, books, and works of art for the executive mansion and exchange or sell personal property acquired subsequent to March 26, 1975, tangible or intangible, which has been acquired by the committee through gifts or otherwise from other public or private organizations, associations, or individuals;

(5) Make recommendations to the Georgia Building Authority for the purchase of any furnishings or other property or for the exchange or sale of any existing inventory at the executive mansion as of March 26, 1975;

(6) Acquire or provide for accession and replacement of objects for the executive mansion;

(7) Administer all funds, public and private, made available to the committee and disburse such funds in accordance with the purposes of this article; and

(8) Keep a complete list of all furnishings and of all gifts and articles received, together with their history and value, and request the assistance of the Division of Archives and History for this purpose. (Ga. L. 1975, p. 212, § 1; Ga. L. 2002, p. 532, § 21.)

50-9-63. Employment and compensation of personnel.

The committee may employ and fix the compensation of researchers, writers, curators, and other such consultants and professional personnel as it may deem necessary to assist in the exercise and performance of its duties. (Ga. L. 1975, p. 212, § 1.)

50-9-64. State agencies authorized to cooperate with committee.

All departments, commissions, boards, agencies, officers, and institutions of the state or any political subdivisions thereof are authorized and directed to cooperate with the committee in carrying out the purposes of this article. (Ga. L. 1975, p. 212, § 1.)

50-9-65. Moneys received to be in special fund; property to become state property and may be sold or exchanged.

All moneys received by the committee shall be set aside as a special fund to be used by the committee to carry out the purposes of this article. All other personal property, tangible or intangible, which is acquired by the committee subsequent to March 26, 1975, shall become the property of the state upon such acquisition. The personal property may be sold or exchanged by the committee as agent for the state, notwithstanding any other provision of law concerning the sale or exchange of personal property of the state, provided that nothing contained in this Code section shall be construed to permit the committee to make a gift of any such personal property. (Ga. L. 1975, p. 212, § 1; Ga. L. 1982, p. 3, § 50.)

Code Commission notes. — Pursuant to substituted for “Article” in the first sentence. Code Section 28-9-5, in 1986, “article” was

50-9-66. Accountability for funds; committee as instrumentality of state; not amenable to action; enjoys sovereign immunity.

(a) The committee shall maintain and account for funds received by it for its purposes separately from the funds of the Georgia Building Authority.

(b) To the extent otherwise provided by law, the Georgia Building Authority may make its funds available to the committee for the purposes of the committee and shall be empowered to provide such other assistance to the committee as the committee and the authority deem appropriate.

(c) The committee, as a division and arm of the Georgia Building Authority, shall hold the status of the authority as a public body corporate and politic and an instrumentality of the state, but neither the committee nor its members shall be amenable to any action of any kind or nature arising out of the discharge of its powers and responsibilities under this

article. The committee shall otherwise have and enjoy the sovereign immunity of the state. (Ga. L. 1975, p. 212, § 1.)

Cross references. — Waiver of sovereign immunity in actions for breach of written contracts where state is a party, § 50-21-1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 258.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 24, 25.

ARTICLE 4

HAZARDOUS MATERIALS REMOVAL AGENCY

Cross references. — Hazardous waste management, § 12-8-60 et seq.

50-9-80 through 50-9-84.

Reserved. Repealed by Ga. L. 2008, p. 224, § 6, effective July 1, 2008.

Editor's notes. — This article was based on Code 1981, §§ 50-9-80 through 50-9-84, enacted by Ga. L. 1986, p. 829, § 1; Ga. L. 2005, p. 694, § 8/HB 293.

ARTICLE 5

PURCHASE OF MATERIALS AND FIXTURES BASED ON LIFE CYCLE COSTS

50-9-100. "Life cycle costs" defined.

As used in this article, the term "life cycle costs" means the total costs associated with the use of building materials and fixtures, including the initial cost of acquisition and the cost of installation, operation, energy use, maintenance, and disposal of such material or fixture. (Code 1981, § 50-9-100, enacted by Ga. L. 1993, p. 1398, § 1.)

50-9-101. Purchase of materials and fixtures to be based on life cycle costs.

Any other provision of law to the contrary notwithstanding, the authority created by Article 1 of this chapter and all other state departments, agencies, and authorities shall purchase building materials and fixtures for use in the construction, reconstruction, renovation, and operation of state buildings and facilities taking into account life cycle costs in addition to acquisition cost. (Code 1981, § 50-9-101, enacted by Ga. L. 1993, p. 1398, § 1.)

ARTICLE 6

INVENTORY OF STATE BUILDINGS

50-9-110 and 50-9-111.

Repealed by Ga. L. 2005, p. 100, § 6/SB 158, effective April 12, 2005.

Editor's notes. — This article was based on Code 1981, §§ 50-9-110 and 50-9-111 enacted by Ga. L. 1999, p. 661, § 1; Ga. L. 2000, p. 136, § 50.

CHAPTER 10

GEORGIA DEVELOPMENT AUTHORITY

Sec.		Sec.	
50-10-1.	Short title.	50-10-5.	Powers and duties.
50-10-2.	Legislative intent.	50-10-6.	Exemption from taxation.
50-10-3.	Creation of authority; administration by agriculture department.	50-10-7.	Certain notes exempt from intangible tax.
50-10-4.	Purpose; powers under business corporation law; prohibition against loans to persons convicted of controlled substance offense.	50-10-8.	Approval of bond issues by financing and investment commission.
		50-10-9.	Rights under federal Constitution.
		50-10-10.	Liberal construction.

Cross references. — Georgia Environmental Facilities Authority, Ch. 23, T. 50.

Editor's notes. — Ga. L. 1986, p. 705, § 4, effective April 2, 1986, repealed former Code Sections 50-10-4 through 50-10-21 and enacted current Code Sections 50-10-4 through 50-10-10. The former Code Sections 50-10-4 through 50-10-21 were based on Ga. L. 1953, p. 337, § 18; Ga. L. 1957, p. 210,

§ 2; Ga. L. 1960, p. 764, § 2; Ga. L. 1983, p. 1026, § 3; Ga. L. 1984, p. 22, § 50; Ga. L. 1985, p. 252, §§ 2-4; and Ga. L. 1986, p. 10, § 50.

Ga. L. 1986, p. 705 contained two sections designated “§ 4,” one of which repealed and reenacted Code Section 50-10-4 et seq. and the other of which provided an effective date for the Act.

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, §§ 19 et seq., 30 et seq.

C.J.S. — 3 C.J.S., Agriculture, §§ 19 et seq., 72 et seq.

50-10-1. Short title.

This chapter may be cited as the “Georgia Development Authority Act.” (Ga. L. 1953, Jan.-Feb. Sess., p. 337, § 1; Ga. L. 1960, p. 764, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

Exemption from intangible property tax. — Georgia Development Authority is exempt from intangible tax on the authority's property including the authority's direct long term mortgage notes; of course, the

holder of long term mortgage notes is not exempt from paying intangible taxes on property when the Georgia Development Authority merely guarantees or insures payment. 1963-65 Op. Att'y Gen. p. 31.

50-10-2. Legislative intent.

(a) It is the purpose and intent of this chapter to provide an instrumentality to assist agricultural and industrial interests in their effort to commence, expand, or diversify their operations by providing credit and

servicing functions to better enable the farmers and businessmen within this state to obtain needed capital funds and to encourage and secure financial institutions in the lending of money for such purposes.

(b) It is the purpose of this chapter to clothe the authority with corporate power to operate and to administer the funds held and received by it and to possess and operate under licenses or permits granted it by the United States or this state. (Ga. L. 1957, p. 210, § 1; Ga. L. 1960, p. 764, § 1; Ga. L. 1983, p. 1026, § 1; Ga. L. 1986, p. 705, § 1.)

50-10-3. Creation of authority; administration by agriculture department.

(a) There is created a body corporate and politic to be known as the Georgia Development Authority which shall be deemed an instrumentality of the state and a public corporation; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. The authority shall consist of seven members: the Commissioner of Agriculture, ex officio, who shall be chairperson of the authority; the state auditor, ex officio; the commissioner of economic development, ex officio; two members of the public appointed by the Governor; and two members representing the interests of agriculture appointed by the Governor. Appointed members shall serve for terms of office of four years and until their successors are appointed and qualified. The authority shall be deemed to be the successor in law and interest to the Georgia Development Authority created by the General Assembly in Ga. L. 1960, p. 764, as amended by Ga. L. 1983, p. 1026.

(b) A majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The members of the authority shall be entitled to and shall be reimbursed for their actual travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority shall make rules and regulations for its own government. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter. The Attorney General shall provide legal services for the authority and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(c) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected by the authority on or about the close of the state's fiscal year for the purpose of obtaining a certified audit of the authority's finances.

(d) All assets received by the authority under the terms of Public Law 499, Eighty-first Congress, Second Session, and all assets of the authority derived therefrom, shall be administered by the authority under the terms of such law, and the authority shall be authorized to employ agents to accomplish such administration. The authority shall not at any time commingle assets provided to the authority under the terms of Public Law 499, Eighty-first Congress, Second Session, with other assets of the authority. The authority shall maintain a separate accounting of such assets and shall maintain suitable books and records of such assets which shall be audited as are the books and records of the authority for other assets.

(e) The authority is assigned to the Department of Agriculture for administrative purposes only. (Ga. L. 1953, Jan.-Feb. Sess., p. 337, § 2; Ga. L. 1960, p. 764, § 4; Ga. L. 1983, p. 1026, § 2; Ga. L. 1984, p. 22, § 50; Ga. L. 1984, p. 420, § 1; Ga. L. 1985, p. 149, § 50; Ga. L. 1986, p. 705, §§ 2, 3; Ga. L. 1989, p. 1641, § 15; Ga. L. 2004, p. 690, § 41.)

Editor's notes. — Ga. L. 1989, p. 1641, which amended this Code section, provides in § 18, not codified by the General Assembly: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

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Invalid criterion for membership in Authority. — The functions of the Georgia Development Authority involve the exercise of executive powers within the meaning of Ga. Const. 1976, Art. I, Sec. II, Para. IV (see Ga. Const. 1983, Art. I, Sec. II, Para. III);

thus, the qualification of members for appointment by the Governor of membership in the General Assembly was invalid. 1975 Op. Att'y Gen. No. 75-142 (decided prior to 1986 amendment).

50-10-4. Purpose; powers under business corporation law; prohibition against loans to persons convicted of controlled substance offense.

(a) The corporate purpose and the general nature of the business of the Georgia Development Authority shall be:

(1) Rural rehabilitation permissible under the charter of the Georgia Rural Rehabilitation Corporation and contained in paragraph (3) thereof and within the meaning of Public Law 499, Eighty-first Congress, Second Session;

(2) The development of agriculture and industry generally within the state by providing, securing, or guaranteeing loans for such purposes; and

(3) Possession of and operation under any franchise, license, or permit granted to it by the United States or this state for a business purpose.

(b) The corporate powers of the authority shall be those provided in this chapter and those additional powers provided in the introductory clause and in paragraphs (1) through (5), (7), (10), and (11) of Code Section 14-2-302 and in Code Section 14-2-825.

(c)(1) As used in this subsection, the term:

(A) "Controlled substance" means any drug, substance, or immediate precursor included in the definition of controlled substances in paragraph (4) of Code Section 16-13-21. Such term shall also include marijuana as it is defined in paragraph (16) of Code Section 16-13-21.

(B) "Convicted" means a plea of guilty or a finding of guilty by a court of competent jurisdiction, irrespective of the pendency or availability of an appeal or an application for collateral relief.

(C) "Person" means a natural person, a corporation which has a convicted person as an officer or member of the board of directors, or a partnership or association which includes a convicted person as a member.

(2)(A) The Georgia Development Authority shall not provide, secure, or guarantee a loan to any person who, at the time such loan is provided, secured, or guaranteed, has been convicted, after April 16, 1990, under the laws of this state, under the laws of the United States, or under the laws of any of the other states or jurisdictions of the United States, of an offense arising out of the unlawful manufacture, distribution, possession, or use of a controlled substance; provided, however, that the provisions of this paragraph shall not apply in the case of a conviction in which a person does not lose his civil rights or to a person who has had his civil rights restored prior to the time such loan is provided, secured, or guaranteed.

(B) Notwithstanding the provisions of subparagraph (A) of this paragraph, the authority shall not be required to verify or make any independent investigation as to whether an applicant for a loan on or after July 1, 1990, has been convicted of one of the proscribed offenses enumerated in subparagraph (A) of this paragraph nor, though it shall not be precluded, shall it be required to foreclose upon such a loan upon later learning that an individual had been convicted of one of the proscribed offenses enumerated in subparagraph (A) of this paragraph prior to application. (Code 1981, § 50-10-4, enacted by Ga. L. 1986, p. 705, § 4; Ga. L. 1989, p. 946, § 115; Ga. L. 1990, p. 2026, § 1; Ga. L. 1994, p. 97, § 50.)

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

Law reviews. — For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 391 (1990).

50-10-5. Powers and duties.

(a)(1) In addition to, and not in limitation of, the powers granted in this chapter, the Georgia Development Authority shall have and may exercise the power and authority to:

(A) Guarantee or insure loans made for rural rehabilitation purposes or for agricultural and industrial development, provided that, with respect to any such guarantee or contract of insurance made by the authority involving an asset provided to the authority under Public Law 499, Eighty-first Congress, Second Session, the authority shall maintain a reserve or insurance fund out of such assets in an amount not less than 15 percent of the contingent liability existing by reason of any such contracts of insurance or guarantee. The reserve or insurance fund of the authority may be invested; and

(B) Borrow money from funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., and administered by the Georgia Environmental Facilities Authority pursuant to paragraph (30) of subsection (b) of Code Section 50-23-5 and to use the same to make loans to finance eligible water pollution control projects which are designed to mitigate pollution from agricultural operations. The borrowing of such moneys and administration of such loans made by the Georgia Development Authority shall be in accordance with federal requirements.

(2) Any funds or assets of the authority obtained under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds derived from such funds or assets, shall not be liable for any deficit, default, or failure of any environmental facility project and the authority shall not be obligated on, responsible for, or liable on any obligation of any kind entered into relating to environmental facility projects. The authority shall only be responsible for those obligations related to the funds or assets of the authority received under Public Law 499, Eighty-first Congress, Second Session and funds or assets derived therefrom.

(b) In addition to the powers granted in Code Section 50-10-4 and subsection (a) of this Code section, the authority shall have the power:

(1) To bring and defend an action in all courts, the original jurisdiction and venue of such actions against the authority being in the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, and to make loans, to provide security for loans, or to guarantee loans for the purpose of developing agriculture or industry; provided, however, that the authority shall not make any such loan or guarantee or provide any such security or issue any bonds, notes, or other obligations in connection therewith, unless the authority shall adopt a resolution finding that the project for which such loan or guarantee is to be made or for which such security is to be provided will promote the development of agriculture or industry;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint officers, agents, and employees, prescribe their duties and qualifications, and fix their compensation;

(6) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(7) To collect fees and charges in connection with its loans, commitments, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(8) To invest, subject to any agreement with bondholders, moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of federal savings and loan associations and state building and loan associations located within the state which have deposits insured by the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration

with the Board of Governors of the Federal Reserve System pursuant to the requirements of the federal Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys and provided, further, that all moneys in each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall be continuously and fully secured by obligations described in subparagraph (A), (B), (C), or (D) of this paragraph, equal at all times to the amount of the interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangements;

(9) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(10) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (8) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments schedule for which such moneys are to be applied;

(11) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(12) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine;

(13) To adopt bylaws governing the conduct of business by the authority, the election of officers of the authority other than the

chairman, the duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(14) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(15) To do all things necessary or convenient to carry out the powers conferred by this chapter; and

(16) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the powers of the authority in the management of the affairs and property of the authority and the exercise of its power.

(c) The authority shall not have the power of eminent domain.

(d) No person shall be eligible to receive a loan from the first-time farmer tax-free note program of the authority, or any similar loan program established by the authority after July 1, 1986, unless such person has demonstrated to the satisfaction of the authority that such person has the ability to and intends to derive at least 25 percent of his or her livelihood from agricultural operations. (Ga. L. 1986, p. 656, § 1; Code 1981, § 50-10-5, enacted by Ga. L. 1986, p. 705, § 4; Ga. L. 2001, p. 1225, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, in the introductory sentence in subsection (b), “subsection (b)” was changed to “subsection (a)”; in paragraph (b)(3), “guaranty” was changed to “guarantee” in two places; and, in paragraph (b)(10), a comma was deleted following “interest payments” near the end.

Pursuant to Code Section 28-9-5, Ga. L. 1986, p. 656, § 1 was treated as an amend-

ment to this Code section, as enacted by Ga. L. 1986, p. 705, § 4, and designated as subsection (d).

U.S. Code. — Public Law 499, Eighty-first Congress, Second Session was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed. The federal Bank Holding Company Act of 1956 is codified at 12 U.S.C. § 1841 et seq.

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Editor’s notes. — In light of the similarity of the statutory provisions, opinions under former O.C.G.A. § 50-10-5, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Financing construction of environmental facilities. — The Georgia Development Au-

thority may enter into contracts with local governments, including local water and sewer authorities, for any period not to exceed 50 years to provide funds to finance the construction of environmental facilities by local governments and for related services. 1985 Op. Att’y Gen. No. 85-29.

50-10-6. Exemption from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes are in all respects for the

benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this chapter that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this chapter shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1981, § 50-10-6, enacted by Ga. L. 1986, p. 705, § 4.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “is” was changed to “are” in the first sentence.

50-10-7. Certain notes exempt from intangible tax.

Long-term notes secured by real estate and held by the authority or its assignees shall be exempt from the intangible recording tax imposed by Article 3 of Chapter 6 of Title 48. (Code 1981, § 50-10-7, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-8. Approval of bond issues by financing and investment commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor. (Code 1981, § 50-10-8, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-9. Rights under federal Constitution.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this chapter shall be construed to remove any such rights. (Code 1981, § 50-10-9, enacted by Ga. L. 1986, p. 705, § 4.)

50-10-10. Liberal construction.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter. (Code 1981, § 50-10-10, enacted by Ga. L. 1986, p. 705, § 4.)

CHAPTER 11

STATE LAW LIBRARY

50-11-1 through 50-11-10.

Reserved. Repealed by Ga. L. 2008, p. 267, § 1, effective May 6, 2008.

Editor's notes. — This chapter consisted of Code Sections 50-11-1 through 50-11-10, and was based on Laws 1783, Cobb's 1851 Digest, p. 665; Laws 1847, Cobb's 1851 Digest, p. 1037; Ga. L. 1851-52, p. 11, § 25; Ga. L. 1861, p. 74, § 2; Orig. Code 1863, §§ 112, 113, 115, 117, 118; Code 1863, §§ 111, 112, 114, 116, 969, 970, 971, 972, 974; Ga. L. 1868, p. 195, §§ 1-4; Code 1868, §§ 106 through 113, 1051 through 1055; Code 1873, §§ 115 through 122, 1046, 1047, 1048, 1049, 1051; Ga. L. 1874, p. 25, § 2; Ga. L. 1880-81, p. 69, § 1; Code 1882, §§ 115, 116, 117, 118, 119, 120, 121, 122, 796, 1046, 1047, 1048, 1049, 1051; Ga. L. 1884-85, p. 134, § 2; Ga. L. 1884-85, p. 139, §§ 1, 2; Ga. L. 1889, p. 153, §§ 1, 2; Ga. L. 1889, p. 181, §§ 1, 2; Civil Code 1895, §§ 149-157, 159, 163, 165, 166, 171, 172; Ga. L. 1904, p. 50, § 1; Ga. L. 1909, p. 141, §§ 1-3, 5; Ga. L. 1909, p. 143, § 1; Civil Code 1910, §§ 172-181, 183, 185,

188, 190-, 198-201; Ga. L. 1912, p. 45, § 1; Ga. L. 1916, p. 133, § 1; Ga. L. 1918, p. 108, § 1; Ga. L. 1919, p. 369, § 1; Code 1933, §§ 101-101—101-104, 101-201—101-203, 101-205—101-210, 101-212—214, 101-217, 101-218; Code 1933, §§ 101-102, 101-104, 101-105, 101-106, enacted by Ga. L. 1947, p. 1166, § 1; Ga. L. 1956, p. 729, § 1; Ga. L. 1956, p. 804, § 1; Ga. L. 1957, p. 596, §§ 1-3; Ga. L. 1972, p. 1015, § 1402; Ga. L. 1972, p. 1253, §§ 1, 2; Code 1933, §§ 101-101—101-105, enacted by Ga. L. 1975, p. 741, § 2; Code 1933, §§ 101-201—101-205, enacted by Ga. L. 1975, p. 741, § 3; Ga. L. 1978, p. 2288, § 1; Ga. L. 1981, p. 818, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 702, §§ 2-4; Ga. L. 1983, p. 3, § 39; Ga. L. 1984, p. 22, § 50; Ga. L. 1985, p. 149, § 50; Ga. L. 1989, p. 1129, §§ 1, 2, 4, 5; Ga. L. 2002, p. 532, § 22.

CHAPTER 12

COMMISSIONS AND OTHER AGENCIES

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Georgia Commission for the National Bicentennial Celebration

Sec.

50-12-1 through 50-12-7 [Repealed].

Article 2

Georgia Council for the Arts

PART 1

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Article 3

Georgia State Games Commission

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Halls of Fame

PART 1

GEORGIA SPORTS HALL OF FAME

50-12-60 through 50-12-63.1 [Repealed].

PART 2

GEORGIA GOLF HALL OF FAME

- 50-12-64. Creation of Golf Hall of Fame; government by board; board assigned to Department of Economic Development.
- 50-12-65. Appointment, terms, compensation, and expenses of board members; personnel; meetings; quorum.
- 50-12-66. Purpose and function of board.
- 50-12-67. Headquarters; halls, rooms, quarters, and offices; designation of facilities as part of hall of fame.
- 50-12-68. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.
- 50-12-69. Nonprofit corporate status of board.

Sec.
50-12-69.1. Authority to apply for federal tax-exempt status.

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

- 50-12-70. Creation of Aviation Hall of Fame; board assigned to Department of Economic Development.
- 50-12-71. Appointment, terms, and expenses of board members.
- 50-12-72. Purpose and function of board.
- 50-12-72.1. Powers granted to board.
- 50-12-73. Headquarters; halls, rooms, quarters, and offices; designation of facilities as part of hall of fame; official repository for aviation history.
- 50-12-74. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.

Subpart 2

Overview Committees

- 50-12-75. Designation of overview committees to review and evaluate Aviation Hall of Fame Board.
- 50-12-76. State agencies to provide assistance to overview committees upon request; utilization of independent services by committees.
- 50-12-77. Reports by overview committees.
- 50-12-78. Criteria to be utilized by committees in evaluating Aviation Hall of Fame Board.
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Article 5

Georgia Commission on Women

- 50-12-80. Creation of commission; appointments to and vacancies in membership; staggered terms.
- 50-12-81. Officers; quorum.

- Sec.
50-12-82. Powers and duties; cooperation with other agencies.
- 50-12-83. Reimbursement for expenses.
- 50-12-84. Annual report.
- 50-12-85 through 50-12-87 [Repealed].

Article 6

Constitutional Amendments Publication Board

- 50-12-100. Creation of board; composition; purpose; chairman; vote requirements.
- 50-12-101. Assignment of numbers by board to proposed constitutional amendments and Constitutions; use of numbers by Secretary of State for election ballots; assignment of short titles or headings.

Article 7

Georgia Hall of Fame Commission

- 50-12-110 through 50-12-112 [Repealed].

Article 8

Georgia Commission on the Holocaust

- 50-12-130. Creation of Georgia Commission on the Holocaust.
- 50-12-131. Membership; terms; qualifications; officers; quorum; powers and duties.
- 50-12-132. Annual reports; vacancies; advisory committees and advisors.
- 50-12-133. Commission authorized to solicit donations.

Article 9

War of 1812 Bicentennial Commission

- 50-12-140. (Repealed effective December 31, 2015) Short title.
- 50-12-141. (Repealed effective December 31, 2015) Legislative findings; commemorative activities to enhance public understanding of historical time period; purpose of commission; international involvement; promotion of tourism and economic development.
- 50-12-142. (Repealed effective December 31, 2015) Definitions.
- 50-12-143. (Repealed effective December 31, 2015) Short title.

Sec.

31, 2015) Membership and structure of commission; responsibilities.

50-12-144. (Repealed effective December 31, 2015) Reporting on gifts, bequests or devises received; final report.

50-12-145. (Repealed effective December

Sec.

31, 2015) Authority of commission.

50-12-146. (Repealed effective December 31, 2015) Compensation of members, executive director, and other personnel.

50-12-147. (Repealed effective December 31, 2015) Termination.

Editor's notes. — Ga. L. 1981, p. 1472, not codified by the General Assembly, created the Georgia Semiquincentenary Commission, which was abolished January 1, 1984, by the terms of the 1981 Act.

Article 8 of Chapter 12 of Title 50 (former Code Sections 50-12-130 through 50-12-137), relating to the Georgia Commission on State

Growth Policy, was enacted as Chapter 21 of Title 50 by Ga. L. 1982, p. 2261, § 1, redesignated as this article by Ga. L. 1983, p. 3, § 39, and amended by Ga. L. 1984, p. 381, §§ 1 through 4. The article was repealed pursuant to Code Section 50-12-137, which provided for the repeal on June 30, 1985.

ARTICLE 1

GEORGIA COMMISSION FOR THE NATIONAL BICENTENNIAL CELEBRATION

50-12-1 through 50-12-7.

Reserved. Repealed by Ga. L. 1991, p. 94, § 50, effective March 14, 1991.

Editor's notes. — Ga. L. 1991, p. 94, § 50, effective March 14, 1991, repealed the Code sections formerly codified as Article 1 of this chapter. The former article consisted of

Code Sections 50-12-1 through 50-12-7 and was based on Ga. L. 1973, p. 311, §§ 1 through 7; Ga. L. 1974, p. 430, § 1; Ga. L. 1975, p. 492, § 1.

ARTICLE 2

GEORGIA COUNCIL FOR THE ARTS

Administrative rules and regulations. — Grant programs, Official compilation of the Rules and Regulations of the State of Georgia,

Grant Program Description for Georgia Council for the Arts, Chapter 269-1.

PART 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2008, p. 614, § 1, effective July 1, 2008, designated Code Sec-

tions 50-12-20 through 50-12-26 as Part 1 of this Article.

50-12-20. Legislative findings and declaration of public policy.

The General Assembly finds that the general welfare of the people of the state will be promoted by giving recognition to the arts as a vital part of our culture and heritage; that with increasing leisure time, the practice and enjoyment of the arts are of increasing importance; and that many of our citizens lack the opportunity to view, enjoy, or participate in live theatrical performances, film making, photography, music, opera, dance, art exhibits, examples of fine architecture, and the performing and visual arts. The General Assembly finds that many of our citizens possess talents of an artistic and creative nature which are not currently utilized to the fullest extent; that broadened activity in the arts will increase employment in the state by encouraging additional cultural activity throughout the state, thus utilizing the talents and abilities of many more citizens; and that the standards of artistic performance will be further improved by continuing encouragement and support. The General Assembly, therefore, declares it to be the public policy of this state to encourage the development of the arts. (Ga. L. 1976, p. 748, § 1; Ga. L. 1986, p. 174, § 2.)

50-12-21. Creation of council.

There is created an arts council to be known as the "Georgia Council for the Arts," hereinafter referred to as the council. (Ga. L. 1976, p. 748, § 2; Ga. L. 1986, p. 174, § 2.)

50-12-22. Appointment of members; terms; vacancies; expenses; removal; chairman; meetings.

(a) The council shall consist of two members from each congressional district and four members representing the state at large who shall be appointed by the Governor. All members shall have demonstrated an interest in the arts. Except for certain members who were appointed in 1979, the term of office of each member shall be three years. In 1979, eight members were appointed for terms of office of one year, eight members for terms of two years, and eight members for terms of three years. The initial appointments were made so that no more than one member from each congressional district or two state-at-large members' terms of office would expire in any one year. Vacancies shall be filled for unexpired terms in the same manner as the original appointment. Membership on the council shall be limited to two successive three-year terms, and a member may be reappointed after a lapse of one year. No member initially appointed to one-year or two-year terms of office shall be prohibited from serving two consecutive three-year terms of office.

(b) Members shall be entitled to reimbursement for expenses incurred in the work of the council when authorized in advance by the director of the Office of Planning and Budget.

(c) Active and continuing participation by members of the council is needed. Any member who fails to attend three regularly scheduled, consecutive meetings may be removed by the council.

(d) A chairman shall be appointed annually by the Governor for a term ending on June 30 of the year following such appointment.

(e) The council shall meet annually, or more often, on the call of the chairman. (Ga. L. 1976, p. 748, § 3; Ga. L. 1979, p. 388, § 1; Ga. L. 1986, p. 174, § 2; Ga. L. 1990, p. 1903, § 12.)

50-12-23. Powers and duties generally.

The council shall advise the Governor through the Office of Planning and Budget concerning methods and programs to:

(1) Stimulate and encourage the study and development of the arts as well as public interest and participation therein;

(2) Encourage public interest in the cultural heritage of the state;

(3) Expand the state's cultural resources;

(4) Encourage and assist freedom of artistic expression essential for the well-being of the arts;

(5) Assist the communities and organizations within the state in originating and creating their own cultural and artistic programs; and

(6) Survey public and private institutions engaged within the state in cultural activities including, but not limited to, architecture, dance, folk arts and applied arts and crafts, literature, music, painting, photography, sculpture, and theater. (Ga. L. 1976, p. 748, § 4; Ga. L. 1986, p. 174, § 2.)

Cross references. — Art in state buildings, duties of Georgia Council for the Arts, § 8-5-5.

50-12-24. Annual report.

The council shall submit an annual report to the Governor concerning the appropriate methods to encourage participation in and appreciation of the arts in order to meet the legitimate needs and aspirations of persons in all parts of the state. (Ga. L. 1976, p. 748, § 5; Ga. L. 1986, p. 174, § 2.)

Cross references. — Annual report on art in state buildings, § 8-5-8.

50-12-25. Powers and authority of Office of Planning and Budget as to council.

The Office of Planning and Budget shall have the powers and authority necessary to carry out the purposes established by this article, including, but not limited to, the powers:

- (1) To establish overall policy for grant awards, evaluations, and programs recommended by the council;
- (2) To hold hearings, make and sign any agreements, and do and perform any acts which may be necessary, desirable, or proper to carry out the purposes of this article;
- (3) To request from any department, division, board, bureau, commission, or other agency of the state such reasonable assistance and data as will enable it properly to carry out its powers and duties;
- (4) To accept, on behalf of the state, any federal funds granted by act of Congress or by executive order for all or any of the purposes of this article; and, upon appropriation by the General Assembly, to expend such funds for the purposes set forth in the appropriations Act;
- (5) To accept any grants, gifts, donations, or bequests for all or any of the purposes of this article;
- (6) To propose methods to encourage private initiative in the arts; and
- (7) To advise and consult with the Governor; the General Assembly; national foundations; and other local, state, and federal departments and agencies on methods to coordinate and assist existing resources and facilities, with the purpose of fostering artistic and cultural endeavors generally. (Ga. L. 1976, p. 748, § 6; Ga. L. 1986, p. 174, § 2; Ga. L. 1992, p. 6, § 50.)

OPINIONS OF THE ATTORNEY GENERAL

Salary and expense information of non-profit contractors receiving "arts grants" funds through the Office of Planning and Budget based upon the recommendation of

the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att'y Gen. No. 95-31.

50-12-26. Appointment of personnel for council.

The director of the Office of Planning and Budget shall select and appoint such personnel as the director shall determine to be necessary to support the council and the programs undertaken pursuant to this article. (Ga. L. 1976, p. 748, § 7; Ga. L. 1986, p. 174, § 2.)

PART 2

GEORGIA ARTS ALLIANCE

Effective date. — This part became effective July 1, 2008.

50-12-30. Legislative findings.

The General Assembly finds that:

(1) Tourism is Georgia's second largest industry and cultural heritage tourism is the fastest growing industry segment;

(2) The arts surpass professional sports in attendance and are ranked as one of the top ten reasons for corporate relocations;

(3) The arts preserve history and heritage for Georgians;

(4) The arts enhance education success for our children through the teaching of complex and abstract ideas; the nurturing of the development of cognitive, social, and personal competencies; and the reaching of otherwise unreachable students;

(5) Preparing Georgia children for success in our competitive global economy that increasingly demands creative solutions to challenging problems is a fundamental obligation of the State of Georgia;

(6) Utilizing all available tools to improve Georgia's public schools is critical to demonstrating Georgia's strong commitment to work force readiness and to encouraging continued job growth and relocation of attractive knowledge based industries within Georgia;

(7) Research studies and experience in recent years demonstrate that the presence of arts in education, whether part of the curriculum or as supplemental programs, can increase students' engagement in learning as well as their social and civic development;

(8) Integrating arts in education in various ways as a meaningful part of the K-12 school environment can have the following benefits:

(A) Reaching and increasing the performance of students who often struggle to succeed in school, including disadvantaged students, English language learners, and students with disabilities;

(B) Providing new challenges for those students already considered successful;

(C) Improving the cognitive skills of students involved in reading, language development, and mathematics;

(D) Lead to a student's development of problem solving and critical and creative thinking skills;

(E) Motivating students to learn and become more involved in their schools;

(F) Increasing student attendance and engagement and lowering drop out rates; and

(G) Promoting student self-confidence and fostering better relationships among students and teachers;

(9) Public funding support for the arts and the teaching and physical infrastructure needed to provide arts and arts in education is an essential part of Georgia's efforts to improve education and provide for economic development and tourism;

(10) Companies desire employees who can meet the challenges of a global economy and can apply creative thought to problem solving;

(11) The arts build communities and increase the quality of life for Georgians;

(12) Increasing the availability of the arts and tourism is a direct economic benefit for the economy of Georgia and will provide jobs and opportunities for our citizens;

(13) It is in the best interests of this state and its citizens to support the arts, education, economic development, and tourism; and

(14) The success and significant advances made by the Georgia Research Alliance as a public-private partnership in higher education demonstrates that a coordinated public-private partnership to focus resources on critical educational objectives is an efficient and flexible means for allocating resources and ensuring measurable results. (Code 1981, § 50-12-30, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

Law reviews. — For survey article on business associations, see 60 Mercer L. Rev. 35 (2008).

50-12-31. Creation of Georgia Arts Alliance; purpose; governing organization; appointment of members of board of trustees; terms; advisory committee.

(a) In order to foster a public-private partnership for the support of the arts, education, economic development, and tourism in this state, there is created the Georgia Arts Alliance. Such alliance shall be for the purpose of receiving and distributing funds for the support of the arts, including the Georgia Council for the Arts, and the teaching and physical infrastructure needed to provide arts and arts in education in order to improve education and provide for economic development and tourism. The Georgia Arts Alliance shall not be an entity or agency of government, but shall be a private entity operating under and in accordance with the laws of this state.

It is the intent of the General Assembly that such private entity take all necessary steps to become a Section 501(c)(3) entity under the Internal Revenue Code.

(b)(1) The Georgia Arts Alliance shall be governed by a board of trustees consisting of ten members. The members of the board shall include the State School Superintendent, the commissioner of economic development, the Executive Director of the Georgia Council of the Arts, and seven members appointed by the Governor, Lieutenant Governor, and Speaker of the House as follows: the Governor shall appoint five members, one of whom may be the head of a not for profit arts organization with an annual budget of more than \$10 million, one of whom may be the head of a not for profit organization with a budget of less than \$10 million, one of whom may be the chief executive officer of a for profit company with more than 1,000 employees, one of whom may be the chief executive officer of a for profit company with less than 1,000 employees, and one of whom is a representative of a private charitable foundation; the Lieutenant Governor shall select one member who may be the head of a school district with more than 25,000 students; and the Speaker of the House shall select one member who may be the head of a school district with less than 25,000 students.

(2) The Governor shall appoint one member to serve as chairperson of the board of trustees. The board may elect such other officers as the board deems appropriate. The board shall meet at the call of the chairperson or the request of any three members.

(c) The members of the board of trustees shall serve terms of four years and until their successors are appointed and qualified; provided, however, that the initial terms of the head of a not for profit arts organization with an annual budget of more than \$10 million, the head of a school district with more than 25,000 students, and the chief executive officer of a for profit company with fewer than 1,000 employees in Georgia shall be for two years and until their successors are appointed and qualified. Thereafter, such members shall serve four-year terms and until their successors are appointed and qualified. The members of the board shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred while on the business of the alliance.

(d) The board of trustees shall appoint an advisory committee to assist the board members in their duties. Such advisory committee shall consist of not more than 30 members and shall be chaired by the executive director of the alliance. The advisory committee shall include at least two representatives from each of the state's congressional districts. In making its appointments, the board shall select members of the boards of arts, education, economic development, and tourism organizations; persons who have shown a commitment to the arts in their communities; and persons who understand the needs of business, education, and the arts and tourism

industries. Such members shall serve for four-year terms and until their successors are selected and qualified; provided, however, that the board of trustees shall designate 15 of the initial appointees to serve terms of two years and until their successors are selected and qualified. Such 15 members shall thereafter serve four-year terms and until their successors are selected and qualified. The members of the advisory committee shall serve without compensation but may be reimbursed for actual and reasonable expenses incurred while on the business of the advisory committee. (Code 1981, § 50-12-31, enacted by Ga. L. 2008, p. 614, § 1/HB 291; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective April 14, 2009, part of an Act to revise, modernize, and correct the Code, revised language in paragraph (b)(1).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “who” was deleted following “one of which” near the

end of paragraph (b)(1), and the “(b)” designation was deleted at the beginning of paragraph (b)(2).

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in subsection (a) of this Code section, is codified as 26 U.S.C. § 501(c)(3).

50-12-32. Purposes.

The Georgia Arts Alliance may have the following purposes:

(1) To support the efforts of the Georgia Council for the Arts in the advancement of the arts and tourism industries of this state;

(2) To support through the arts and arts education the efforts of the Georgia Department of Economic Development;

(3) To support the improvement of public education in Georgia through the integration of the arts in education and to ensure that the benefits of arts education are competitively available to all schools;

(4) To provide annually to individual public schools enabling matching grants for up to three years for a specified arts program or project for students based on competitive evaluation by the advisory board or a committee of the advisory board of the various proposals;

(5) To provide annually to the Georgia Council for the Arts an incremental addition to the council’s funding from other sources to support professional development of teachers, teaching artists, and administrators for arts in education through learning grants to individuals; and to support employment of an art education specialist in both the Georgia Council for the Arts and the Department of Education;

(6) To partner with a Learning Center for Excellence in the Arts serving all of Georgia which is owned or operated by an organization that is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code and which is part of a Music Center of Excellence serving all of Georgia and has an infrastructure in place to support at least 50,000 students in kindergarten through grade 12;

(7) To receive, invest, and administer funds received, including without limitation funds from the state, the federal government, private donations, grants, and other sources to fulfill the purposes for which the alliance is created;

(8) To attract contributions and grants for the purposes of the alliance;

(9) To utilize funds of the alliance for matching dollars for federal and foundation grants to fulfill the purposes of the alliance; and

(10) To engage in other activities designed to support Georgia's arts and the teaching and physical infrastructure needed to provide arts and arts in education in order to improve education and provide for economic development and tourism. (Code 1981, § 50-12-32, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

U.S. Code. — Section 501(c)(3) of the Internal Revenue Code, referred to in paragraph (6) of this Code section, is codified as 26 U.S.C. § 501(c)(3).

50-12-33. Duties and responsibilities of board of trustees.

The board of trustees shall have the following duties and responsibilities:

(1) To operate and manage the Georgia Arts Alliance, including the investment and reinvestment of the alliance's funds, the management of assets of the alliance, and the distribution of such funds and assets to fulfill the purpose of the alliance;

(2) To enter into contracts with public and private entities for services needed by the alliance and to fulfill the purposes of the alliance;

(3) To employ such staff and consultants as deemed necessary to fulfill the purposes of the alliance and to manage, invest, and administer funds and assets of the alliance;

(4) To receive, retain, and invest donations, state and federal funding, grants, and other funds and assets;

(5) To ensure that an annual independent audit is conducted of all funds and assets of the alliance;

(6) To apply for and administer grants from public and private entities to fulfill the purposes of the alliance, to assist Georgia arts organizations in obtaining and administering grants for these purposes, and to partner with other organizations in order to obtain such grants;

(7) To institute and administer grant programs for Georgia arts organizations and programs to fulfill the purposes of the alliance;

(8) To ensure that determinations of any public funding recipients shall be based not on political expediency but rather on the project's

contribution to the general welfare of its intended audience and the project's demonstration of its relative ability to provide benefits to the state and its citizens as quantified as required by paragraph (10) of this Code section;

(9) To promote, fund, conduct, and assist in the development, provision, and expansion of arts education programs in Georgia and the teaching and physical infrastructure needed to provide arts and arts in education;

(10) To develop a measurement consistent with state or national standards that will ensure that information provided by the alliance in any report to the Governor and the General Assembly concerning the impact of the arts on education, economic development, and tourism have verifiable metrics in order to aid the General Assembly in determining whether any public money expended in support of the arts provides quantifiable benefits to the state and its citizens; and

(11) To perform such other tasks as may be appropriate to fulfill its purposes not inconsistent with law. (Code 1981, § 50-12-33, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

Code Commission notes. — Pursuant to was substituted for a period at the end of Code Section 28-9-5, in 2008, a semicolon paragraph (8).

50-12-34. Independent audit; reporting.

(a) The funds and assets of the alliance shall be independently audited annually, and the results of such audit shall be open to inspection at reasonable times by any person. A copy of the audit report shall be sent to the state auditor and the state accounting officer.

(b) The alliance shall provide the Governor and the members of the General Assembly with a full report of its activities and funds distribution in December of each year with recommendations, if any, for legislation to assist the alliance in achieving its purposes. The report shall include information on the impact of the arts on education, economic development, and tourism, specifying the metric results using the measurement system developed by the alliance as required in paragraph (10) of Code Section 50-12-33. (Code 1981, § 50-12-34, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

50-12-35. Recommendations to Governor and General Assembly.

The Georgia Arts Alliance may from time to time make written recommendations to the Governor and the General Assembly for strengthening of the arts in Georgia. The recommendations may include, but not be limited to, the following:

(1) Strategies for promoting, both within Georgia and beyond, cultural tourism for all areas of the state; and

(2) Recommendations regarding the use of arts in education and instruction in arts in the public schools. (Code 1981, § 50-12-35, enacted by Ga. L. 2008, p. 614, § 1/HB 291.)

ARTICLE 3

GEORGIA STATE GAMES COMMISSION

Editor's notes. — Ga. L. 1989, p. 1786, § 1, effective July 1, 1989, repealed the Code sections formerly codified at Article 3 and enacted the current article. The former ar-

ticle consisted of Code Sections 50-12-40 through 50-12-46, relating to the State Commission on Physical Fitness, and was based on Ga. L. 1978, p. 814, §§ 1 through 7.

50-12-40. Definitions.

As used in this article, the term:

(1) "Direct-support organization" means a Georgia nonprofit corporation organized and operated to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the Georgia State Games, Olympic training facilities, and the promotion of national and international amateur sports competition.

(2) "Physical fitness" means good or improved habits relating to recreation, exercises, sports, and the use of leisure time and instructions for these purposes and for improving the physique and health of the residents of the state. (Code 1981, § 50-12-40, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-41. Creation of Georgia State Games Commission; purpose; administration.

(a) There is created a Georgia State Games Commission, hereafter called the commission, for the purpose of protecting and improving the physical fitness of the residents of the state.

(b) The commission is assigned to the Department of Natural Resources for administrative purposes only, as specified in Code Section 50-4-3. (Code 1981, § 50-12-41, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1990, p. 1146, § 1.)

50-12-42. Purpose of article.

The purpose of this article is:

(1) To promote the health and physical fitness of the citizens of this state;

(2) To promote participation in amateur sports by citizens of all ages and skill levels;

(3) To promote a state-wide program of amateur athletic competition, culminating in state championship competitions; and

(4) To promote state, national, and international amateur sports through the establishment of Olympic training facilities within the state. (Code 1981, § 50-12-42, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-43. Membership of commission; term of office; chairman; meetings; quorum; rules; vacancies.

(a) The commission shall consist of members to be appointed as follows:

(1) The Governor shall appoint one member from each congressional district in this state;

(2) The President of the Senate shall appoint two members from the state at large; and

(3) The Speaker of the House of Representatives shall appoint two members from the state at large.

(b) The members shall be selected because of their experience and interest in physical fitness and amateur athletics and shall share a commitment to promote amateur athletics in the state. The terms of the 12 members of the commission who were in office on January 1, 1991, shall expire on December 31, 1993. As soon as legally permissible after January 1, 1991, the President of the Senate and the Speaker of the House of Representatives shall each appoint one additional member to the commission for initial terms expiring on December 31, 1993. In the event the number of members of the United States House of Representatives from Georgia is increased following the United States decennial census of 1990, the Governor shall appoint an appropriate number of additional members to the commission and such members shall have initial terms expiring on December 31, 1993. Successors to members whose terms expire on December 31, 1993, shall be appointed for initial terms as follows:

(1) Members appointed by the Governor from odd-numbered congressional districts, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives shall have initial terms beginning on January 1, 1994, and ending December 31, 1995; and

(2) Members appointed by the Governor from even-numbered congressional districts, one member appointed by the President of the Senate, and one member appointed by the Speaker of the House of Representatives shall have initial terms beginning on January 1, 1994, and ending December 31, 1997.

Successors to such members and future successors shall be appointed immediately prior to the expiration of a term of office, shall take office on January 1 following their appointment, and shall have terms of office of four years each and until their respective successors are appointed. Members shall be eligible for reappointment for an unlimited number of terms.

(c) Members shall elect a chairman who shall be a member of the commission. The commission shall meet regularly at the call of the Governor or the chairman. A majority of the total number of members to which the commission is entitled shall constitute a quorum. The commission shall adopt such rules and regulations as are necessary and proper to govern its procedure and business.

(d) In the event of the death, disability, resignation, removal, or refusal to serve of any member, the appointing official of that member shall appoint a qualified person to fill the unexpired term.

(e) Each member of the commission shall receive the same expense allowance per day as that received by a member of the General Assembly for each day such member of the commission is in attendance at a meeting of the commission, plus reimbursement for actual transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile in connection with such attendance. (Code 1981, § 50-12-43, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 1.)

Code Commission notes. — Pursuant to inserted following “Senate” in paragraphs Code Section 28-9-5, in 1991, commas were (b)(1) and (b)(2).

50-12-44. Promotion of physical fitness and sports.

The commission shall have the following powers and duties in addition to other powers and duties set forth in this article:

(1) To develop and stage a program of state-wide amateur athletic competitions to be known as the “Georgia State Games”;

(2) To enter into contracts with both public and private parties in connection with the exercise of powers and duties of the commission;

(3) To procure insurance coverage for participants in its programs;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff;

(5) To enlist the support of individuals, civic groups, amateur and professional sports associations, and other organizations in promoting, conducting, and staging the Georgia State Games and in promoting and improving physical fitness in amateur sports programs;

(6) To enter into agreements for the development, marketing, promotion, staging, and television and radio broadcasting or reproduction of:

(A) The Georgia State Games; and

(B) The official Georgia State Games emblem, posters, and any other artistic, orthographic, or visual representations or designations relating to the Georgia State Games;

(7) To accept monetary grants, gifts, and proceeds arising from any contracts of the commission from the federal government; state government; any county, municipality, or local government; any board, bureau, commission, agency, authority, or establishment of any such government; or any individual, group of individuals, or any other organization, public or private; and to hold, invest, and disburse such grants, gifts, and proceeds and the income derived from the grants, gifts, and proceeds in carrying out the objectives and purposes of the commission;

(8) To accept from the federal government or any instrumentality thereof or any other public or private person, firm, or corporation in the name of and for the state services, equipment, supplies, and materials by way of gift or grant for any purpose provided by this article;

(9) To promote the development of Olympic training centers within the state. Such centers shall be managed by a Georgia State Games and Olympic training centers direct-support organization under contract with the Department of Natural Resources as further provided in Code Section 50-12-45. The commission shall assure that state and local governmental entities and other entities cooperate to the extent feasible in providing existing facilities for use in Olympic training;

(10) To promote national and international amateur athletic competitions;

(11) To recommend rules for adoption and establish policies for the operation of the Georgia State Games, the promotion of national and international amateur athletic competitions, and the development of Olympic training centers;

(12) To maintain liaison with the Department of Education, county and independent boards of education, private and parochial schools, physical fitness commissions of the several political subdivisions of the state, and comparable agencies of other states or of the federal government;

(13) To sponsor physical fitness and amateur sports workshops, clinics, conferences, and other similar activities;

(14) To give recognition to outstanding developments and achievements in, and contributions to, physical fitness and amateur sports;

(15) To collect and disseminate physical fitness and sports information and initiate advertising campaigns promoting physical fitness and amateur sports;

(16) To encourage local governments and communities to develop local physical fitness programs and amateur athletic competition; and

(17) To adopt, alter, or repeal its bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the commission may deem necessary or expedient in facilitating its business. (Code 1981, § 50-12-44, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, “and” was inserted preceding “television” in the introductory language of paragraph (6).

OPINIONS OF THE ATTORNEY GENERAL

Power of the commission to procure insurance coverage for participants does not include the authority to procure insurance for sponsors. 1995 Op. Att’y Gen. No. 95-32.

50-12-45. Assistance by direct-support organization; contract with organization; pattern and design of games; frequency and sites; subsidiary corporations.

(a) The commission may authorize a direct-support organization as defined by Code Section 50-12-40 to assist the operation of the Georgia State Games, the promotion of national and international amateur athletic competitions, and the development of Olympic training centers. The direct-support organization shall operate under contract with the Department of Natural Resources.

(b) The contract between the direct-support organization and the Department of Natural Resources shall, at a minimum, provide for:

(1) Approval of the articles of incorporation of the direct-support organization by the commission, and for the governance of the direct-support organization by members appointed by the commission and approved by the Governor;

(2) Submission of an annual budget for the approval of the commission and the Governor. The budget shall be in accordance with rules adopted by the commission;

(3) Certification by the Governor or his designee, after conducting an annual financial and performance review, that the direct-support organization is operating in compliance with the terms of the contract and in a manner consistent with the goals of the commission and in the best interest of the state. Such certification shall be made to the commission annually and reported in the official minutes of a meeting of the commission;

(4) The release and conditions for the expenditure of any state revenues;

(5) The reversion to the state of funds held in trust by the direct-support organization if the contract is terminated; and

(6) The fiscal year of the direct-support organization as beginning on July 1 and ending June 30 in each and every year.

(c) The Georgia State Games shall be patterned after the Summer Olympic games with variations as necessitated by the availability of facilities, equipment, and expertise. The games shall be designed to encourage the participation of athletes representing a broad range of age groups, skill levels, and Georgia communities. Participants shall be residents of this state. Regional competitions shall be held throughout the state, and the top qualifiers in each sport shall proceed to the final competitions to be held at a site in the state having the necessary facilities and equipment for conducting the competitions.

(d) The commission shall determine the frequency of the Georgia State Games and shall select the sites of the final competition and regional competitions.

(e) The commission is authorized to incorporate one or more nonprofit corporations as subsidiary corporations of the commission for the purpose of carrying out any of the powers of the commission and to accomplish any of the purposes of the commission. Any subsidiary corporations created pursuant to this subsection shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the commission, any assets shall revert to the commission or to any successor to the commission or, failing such succession, to the State of Georgia. (Code 1981, § 50-12-45, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 3; Ga. L. 1996, p. 1104, § 1.)

50-12-46. Authority of Governor to permit use of property, facilities, and services by direct-support organization.

The Governor is authorized to permit the use of property, facilities, and personal services of or at any university system facility or institution by any Georgia State Games and Olympic training centers direct-support organization, subject to the provisions of this Code section. For the purposes of this Code section, personal services includes full-time or part-time personnel as well as payroll processing. (Code 1981, § 50-12-46, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-47. Audit of Georgia State Games direct-support organization.

The Georgia State Games direct-support organization shall make provisions for an annual financial and compliance audit of its financial accounts and records by an independent certified public accountant in accordance

with rules established by the commission. The annual audit report shall be submitted to the Governor and the commission for review and approval. Upon approval, the Governor and the commission shall certify the audit report to the Department of Audits and Accounts for review and approval. (Code 1981, § 50-12-47, enacted by Ga. L. 1989, p. 1786, § 1.)

50-12-48. Annual report of commission; budget.

The commission shall make an annual report of its activities to the Governor and to the General Assembly, with any recommendations which it may wish to make. The commission shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the report in the manner which it deems to be most effective and efficient. (Code 1981, § 50-12-48, enacted by Ga. L. 1989, p. 1786, § 1; Ga. L. 1991, p. 1590, § 4; Ga. L. 2005, p. 1036, § 45/SB 49.)

ARTICLE 4

HALLS OF FAME

PART 1

GEORGIA SPORTS HALL OF FAME

Editor's notes. — This part consisted of 2306, §§ 1 - 4; Ga. L. 1982, p. 1153, § 1; Ga. Code Sections 50-12-60 through 50-12-63.1, L. 1993, p. 1731, § 1; Ga. L. 1994, p. 587, relating to the Georgia Sports Hall of Fame § 1. Board, and was based on Ga. L. 1978, p.

50-12-60 through 50-12-63.1.

Reserved. Repealed by Ga. L. 1998, p. 214, § 1, effective May 1, 1998.

PART 2

GEORGIA GOLF HALL OF FAME

50-12-64. Creation of Golf Hall of Fame; government by board; board assigned to Department of Economic Development.

(a) There is created the Georgia Golf Hall of Fame which shall be governed by the Georgia Golf Hall of Fame Board.

(b) The board is assigned to the Department of Economic Development for administrative purposes only, as specified in Code Section 50-4-3. (Code 1981, § 50-12-64, enacted by Ga. L. 1982, p. 1153, § 1; Ga. L. 2005, p. 306, § 6/SB 125.)

50-12-65. Appointment, terms, compensation, and expenses of board members; personnel; meetings; quorum.

The board shall be composed of 15 members. Nine members shall be appointed by the Governor, three members shall be appointed by the Lieutenant Governor, and three members shall be appointed by the Speaker of the House of Representatives. All members shall be appointed for terms of six years. The Governor, the Lieutenant Governor, and the Speaker of the House of Representatives shall consider different areas of the state when making appointments to the board. The board shall elect a chairperson, a vice chairperson, and such other officers as it deems advisable from its own membership. The members shall receive no compensation for their services but shall be reimbursed for expenses incurred in attending meetings of the board. The board is authorized to employ such personnel as it deems necessary to enable it to carry out its duties and functions; however, such employees shall not be subject to the State Personnel Administration of employment and employment administration. The board shall meet once each quarter and at such other times as the board deems necessary but not more than eight times annually. A majority of the members shall constitute a quorum for the transaction of business. (Code 1981, § 50-12-65, enacted by Ga. L. 1982, p. 1153, § 1; Ga. L. 1994, p. 309, § 1; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” near the end of the seventh sentence of this Code section.

50-12-66. Purpose and function of board.

It shall be the main purpose and function of the board to honor those, living or dead, who by achievement or service have made outstanding and lasting contributions to the sport of golf in this state or elsewhere. The board is authorized to conduct surveys and polls and to appoint committees to assist it in performing its purpose and function. (Code 1981, § 50-12-66, enacted by Ga. L. 1982, p. 1153, § 1.)

50-12-67. Headquarters; halls, rooms, quarters, and offices; designation of facilities as part of hall of fame.

The headquarters of the board shall be located in Augusta, Richmond County, Georgia. The board may obtain such halls, rooms, quarters, and offices as it deems necessary for conducting its affairs. The board shall provide a portion of any such space as it shall deem necessary for the display of busts, statues, plaques, books, papers, pictures, and other exhibits and material relating to sports, athletics, and athletes. In addition, the board is authorized to recognize and designate any existing or proposed facility as a

part of the hall of fame as may be appropriate. (Code 1981, § 50-12-67, enacted by Ga. L. 1982, p. 1153, § 1; Ga. L. 1983, p. 3, § 39.)

50-12-68. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.

(a) The board is authorized to solicit and accept donations, contributions, and gifts of money and property to enable it to carry out its function and purpose. The donations, contributions, and gifts shall be exempt from all taxation in this state. The General Assembly is authorized to appropriate funds to the board.

(b) The board is authorized to make such contracts, leases, or agreements as may be necessary and convenient to carry out the duties and purposes for which the board is created. The board is authorized to enter into contracts, leases, or agreements with any person, firm, or corporation, public or private, upon such terms and for such purposes as may be deemed advisable by the board. (Code 1981, § 50-12-68, enacted by Ga. L. 1982, p. 1153, § 1.)

50-12-69. Nonprofit corporate status of board.

The applicable statutes of this state, whether now or hereafter in effect, relating to the powers of nonprofit corporations and to meetings and actions of the board of directors of nonprofit corporations shall apply to the Georgia Golf Hall of Fame Board. (Code 1981, § 50-12-69, enacted by Ga. L. 1996, p. 353, § 1.)

50-12-69.1. Authority to apply for federal tax-exempt status.

The Georgia Golf Hall of Fame Board shall be authorized to apply for federal tax-exempt status under Section 501(c)(3) of the United States Internal Revenue Code of 1986, as amended. (Code 1981, § 50-12-69.1, enacted by Ga. L. 1996, p. 353, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “tax-exempt” was substituted for “tax exempt” near the beginning.

PART 3

GEORGIA AVIATION HALL OF FAME

Subpart 1

General Provisions

Editor's notes. — Ga. L. 1991, p. 1773, Sections 50-12-70 through 50-12-74 as Sub-
§ 2, effective July 1, 1991, designated Code part 1.

50-12-70. Creation of Aviation Hall of Fame; board assigned to Department of Economic Development.

(a) There is created the Georgia Aviation Hall of Fame which shall be governed by the Georgia Aviation Hall of Fame Board.

(b) The board is assigned to the Department of Economic Development for administrative purposes only, as specified in Code Section 50-4-3. (Code 1981, § 50-12-70, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2005, p. 306, § 7/SB 125.)

50-12-71. Appointment, terms, and expenses of board members.

(a) The board shall be composed of 17 members to be appointed as follows:

(1) Sixteen members shall be appointed by the Governor, five members for initial terms of two years; five members for initial terms of three years; four members for initial terms of four years; and two members provided for in 1991 for initial terms of five years. Seven of the members appointed by the Governor may reside in any area of the state. Of the remaining nine members appointed by the Governor, one member shall reside in and be appointed from each of the nine districts provided in subsection (b) of this Code section. Successors to such members shall be appointed by the Governor for terms of six years; and

(2) One member shall be appointed by the Commander of the Warner Robins Air Logistics Center at Robins Air Force Base in Houston County, Georgia, for an initial term of four years, and successors shall be appointed by the Governor for terms of six years. This member may reside in any area of the state.

(b) For the purpose of appointing nine members of the board, the state shall be divided into nine districts based upon the ZIP Code areas as designated by the United States Postal Service and as such areas exist on January 1, 1989. The nine districts shall be composed as follows:

District 1:

ZIP Code Areas 305 and 307;

District 2:

ZIP Code Area 306;

District 3:

ZIP Code Areas 300, 301, 302, and 303;

District 4:

ZIP Code Areas 304, 308, and 309;

District 5:

ZIP Code Areas 310 and 312;

District 6:

ZIP Code Areas 318 and 319;

District 7:

ZIP Code Area 317;

District 8:

ZIP Code Area 316; and

District 9:

ZIP Code Areas 313, 314, and 315.

(c) Of the 17 members of the board, at least 11 members shall have experience in and be representative of the aviation industry or profession. Initial appointments shall be made prior to July 1, 1989, except that the additional members provided for in 1991 shall be appointed prior to October 1, 1991. In the event a vacancy occurs in the membership of the board, the Governor shall promptly fill the same for the unexpired term. A majority of the members shall constitute a quorum for the transaction of business.

(d) The board shall elect a chairman, a vice-chairman, and such other officers as it deems advisable from its own membership. The members shall receive no compensation for their services but shall be reimbursed for expenses incurred in attending meetings of the board. The board is authorized to employ such personnel as it deems necessary to enable it to carry out its duties and functions; however, such employees may not be subject to the State Personnel Administration of employment and employment administration. The board shall meet once each quarter and at such other times as the board deems necessary but not more than eight times

annually. (Code 1981, § 50-12-71, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 1991, p. 1773, § 1; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “state merit system” in the next-to-last sentence of subsection (d).

50-12-72. Purpose and function of board.

(a) It shall be the main purpose and function of the board to promote and encourage the growth and public support of aviation within the state by honoring those, living or dead, who by extraordinary achievement or service have made outstanding and lasting contributions to aviation in Georgia. Persons eligible for recognition in the Georgia Aviation Hall of Fame shall include residents of the state whose achievements in or contributions to aviation occurred within or outside the state and nonresidents whose achievements in or contributions to aviation occurred within the state. The board is authorized to conduct surveys and polls and to appoint committees to assist it in performing its purpose and function.

(b) Without limiting the generality of subsection (a) of this Code section, it is specifically further provided that the board shall be authorized to establish a library and a research archive program for purposes of education and research in the fields of aviation, aviation history, and related areas. The board shall be authorized to receive, catalog, and maintain documents, books, pictures, and other items for such purposes. (Code 1981, § 50-12-72, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2000, p. 841, § 1.)

50-12-72.1. Powers granted to board.

The Georgia Aviation Hall of Fame Board shall, in furtherance of its purposes and in addition to other powers granted to the board by law, have those powers generally granted by law to state authorities, including specifically, without limitation, the power to acquire, improve, and hold real and personal property and the power to contract with other governmental authorities, departments, and agencies and private entities for such purposes. (Code 1981, § 50-12-72.1, enacted by Ga. L. 2002, p. 820, § 2.)

Cross references. — Aviation, T. 6.

50-12-73. Headquarters; halls, rooms, quarters, and offices; designation of facilities as part of hall of fame; official repository for aviation history.

(a) With the approval of the federal government, the Georgia Aviation Hall of Fame shall be located in the Museum of Aviation at Robins Air Force Base in Houston County, Georgia. The headquarters of the board shall be located in Houston County, Georgia. The board may obtain such halls,

rooms, quarters, and offices as it deems necessary for conducting its affairs. The board is authorized to recognize and designate any existing or proposed facility as a part of the hall of fame as may be appropriate.

(b) The Georgia Aviation Hall of Fame is designated as and shall be known as the Official State of Georgia Repository for Aviation History. (Code 1981, § 50-12-73, enacted by Ga. L. 1989, p. 1682, § 1; Ga. L. 2000, p. 841, § 2.)

50-12-74. Acceptance of gifts; exemption from taxation; appropriated funds; authorization to enter into contracts, leases, and agreements.

(a) The board is authorized to solicit and accept donations, contributions, and gifts of money and property to enable it to carry out its function and purpose. The donations, contributions, and gifts shall be exempt from all taxation in this state. The General Assembly is authorized to appropriate funds to the board.

(b) The board is authorized to make such contracts, leases, or agreements as may be necessary and convenient to carry out the duties and purposes for which the board is created. The board is authorized to enter into contracts, leases, or agreements with any person, firm, or corporation, public or private, upon such terms and for such purposes as may be deemed advisable by the board. (Code 1981, § 50-12-74, enacted by Ga. L. 1989, p. 1682, § 1.)

Subpart 2

Overview Committees

50-12-75. Designation of overview committees to review and evaluate Aviation Hall of Fame Board.

The House Economic Development and Tourism Committee and the Senate Economic Development Committee shall act and serve as overview committees of the Georgia Aviation Hall of Fame. The committees shall periodically inquire into and review the operations of the Georgia Aviation Hall of Fame, as well as periodically review and evaluate the success with which the Georgia Aviation Hall of Fame Board is accomplishing its statutory duties and functions as provided in Subpart 1 of this part. (Code 1981, § 50-12-75, enacted by Ga. L. 1991, p. 1773, § 2; Ga. L. 2009, p. 303, §§ 5, 16/HB 117.)

The 2009 amendment, effective April 30, 2009, in the first sentence of this Code section, substituted “House Economic Development and Tourism Committee” for “Industry Committee of the House of Representatives”, and substituted “Senate Economic Development Committee” for “Senate Economic Development, Tourism, and

Cultural Affairs Committee”. See the Editor’s note for intent.

Editor’s notes. — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: “This Act is intended to reflect the current internal organization of the

Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

50-12-76. State agencies to provide assistance to overview committees upon request; utilization of independent services by committees.

The state auditor, the Attorney General, and all other agencies of state government, upon request by the committees, shall assist the committees in the discharge of their duties as set forth in this subpart. The committees may secure the services of independent accountants, engineers, and consultants to assist them in carrying out their duties. (Code 1981, § 50-12-76, enacted by Ga. L. 1991, p. 1773, § 2.)

50-12-77. Reports by overview committees.

The Georgia Aviation Hall of Fame Board shall cooperate with the committees, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committees, set forth in this subpart, may be timely and efficiently discharged. The board shall submit to the committees such reports and data as the committees shall reasonably require of the board in order that the committees may adequately perform their functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Aviation Hall of Fame or the Georgia Aviation Hall of Fame Board. The committees shall, on or before the first day of January of each year, and at such other times as they deem necessary, submit to the General Assembly a report of their findings and recommendations based upon the review of the Georgia Aviation Hall of Fame, as set forth in this subpart. (Code 1981, § 50-12-77, enacted by Ga. L. 1991, p. 1773, § 2; Ga. L. 2005, p. 694, § 9/HB 293.)

50-12-78. Criteria to be utilized by committees in evaluating Aviation Hall of Fame Board.

In the discharge of their duties, the committees shall evaluate the performance of the Georgia Aviation Hall of Fame Board consistent with the following criteria:

- (1) Prudent, legal, and accountable expenditure of public funds;
- (2) Efficient operation; and

(3) Performance of its statutory responsibilities. (Code 1981, § 50-12-78, enacted by Ga. L. 1991, p. 1773, § 2.)

50-12-79. Expenditure of funds by overview committees.

(a) The committees are authorized to expend state funds available to the committees for the discharge of their duties. Said funds may be used for the purposes of paying for services of independent accountants, engineers, and consultants, and paying all other necessary expenses incurred by the committees in performing their duties.

(b) The members of the committees shall receive the allowances authorized for legislative members of interim legislative committees.

(c) The funds necessary for the purposes of the committees shall come from the funds appropriated to and available to the legislative branch of government. (Code 1981, § 50-12-79, enacted by Ga. L. 1991, p. 1773, § 2.)

ARTICLE 5**GEORGIA COMMISSION ON WOMEN**

Editor's notes. — Ga. L. 1992, p. 820, § 1, effective July 1, 1992, repealed the Code sections formerly codified as this article and enacted the current article. The former article consisted of Code Sections 50-12-80

through 50-12-87, relating to the Commission on the Status of Women, and was based on Ga. L. 1966, p. 605, §§ 1-7; Ga. L. 1981, Ex. Sess., p. 8; and Ga. L. 1982, p. 3, § 50.

50-12-80. Creation of commission; appointments to and vacancies in membership; staggered terms.

(a) There is created the Georgia Commission on Women. The commission shall be composed of 15 members to be appointed as follows:

- (1) Five members shall be appointed by the Governor;
- (2) Five members shall be appointed by the President of the Senate; and
- (3) Five members shall be appointed by the Speaker of the House of Representatives.

(b) The members of the commission shall be women and men of recognized ability and achievement. All vacancies shall be filled for the unexpired term by the original appointing official. Except as otherwise provided in subsection (c) of this Code section, members shall serve for terms of four years and shall be eligible for successive appointments by an appointing official. Any member with four consecutive unexcused absences from regular monthly meetings may be removed from the commission by the appointing official. Each person appointed to the commission shall be a full-time resident of Georgia. Any member who ceases to be a full-time resident of this state during the term of his or her membership shall be removed from the commission and such vacancy shall be filled by the Governor.

(c) To effect staggered terms of office for members of the commission and effective with members appointed for terms beginning in 2000, the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives shall each appoint: two members for two-year terms of office; two members for three-year terms of office; and one member for a one-year term of office. Thereafter, all members shall be appointed to serve four-year terms of office. (Code 1981, § 50-12-80, enacted by Ga. L. 1992, p. 820, § 1; Ga. L. 2000, p. 1219, §§ 1, 2.)

50-12-81. Officers; quorum.

The commission shall elect a chairman, vice chairman, and a secretary from among its members for terms of two years, and any member shall be eligible for successive election to such office by the commission. A quorum for transacting business shall be a majority of the members of the commission. (Code 1981, § 50-12-81, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-82. Powers and duties; cooperation with other agencies.

(a) The commission shall have the following powers and duties:

(1) To determine the scope and nature of the studies and research to be undertaken by the commission, including, but not limited to:

(A) Educational needs of and opportunities for women;

(B) Social security and tax laws as they affect women;

(C) Women's health issues;

(D) Political, legal, civil, property, and social rights of women; and

(E) Employment policies in the public and private sector and their impact on the wage-earning capacity of women;

(2) To collect and disseminate information regarding the status of women in the State of Georgia and the nation;

(3) To review and analyze the laws of the State of Georgia and their impact on the lives of the women of this state;

(4) To consult with and advise the Governor, and any state department, agency, board, commission, or authority on matters pertaining to women;

(5) To cooperate with the government of the United States and the governments of other states in programs relating to women;

(6) To promote, encourage, and provide advisory assistance to state, local, and community women's professional, business, and civic organizations;

(7) To accept public or private grants, devises, and bequests; and

(8) To hold public hearings, conduct studies, or take any other action the commission deems necessary to fulfill its responsibilities.

(b) The commission shall be authorized to enter into all contracts or agreements necessary or incidental to the performance of its duties.

(c) All executive departments, agencies, boards, commissions, and authorities shall cooperate with the commission in the performance of its duties. (Code 1981, § 50-12-82, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-83. Reimbursement for expenses.

The members of the commission shall be reimbursed for expenses incurred while conducting the business of the commission from public or private grants, devises, or bequests received by the commission. (Code 1981, § 50-12-83, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-84. Annual report.

The commission shall publish an annual report summarizing the activities, findings, and recommendations of the commission. The report shall be submitted to the Governor, the President of the Senate, the Speaker of the House of Representatives, and all members of the Senate and the House of Representatives not later than November 1 of each year. (Code 1981, § 50-12-84, enacted by Ga. L. 1992, p. 820, § 1.)

50-12-85 through 50-12-87.

Repealed by Ga. L. 1996, p. 6, § 50, effective February 12, 1996.

Editor's notes. — These Code sections were based on Ga. L. 1966, p. 605, §§ 5-7.

ARTICLE 6

CONSTITUTIONAL AMENDMENTS PUBLICATION BOARD

50-12-100. Creation of board; composition; purpose; chairman; vote requirements.

There is created the Constitutional Amendments Publication Board to be composed of the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The board shall provide for the publication of proposed constitutional amendments or of a proposed new Constitution, or of both such amendments and such Constitution, pursuant to Article X, Section I, Paragraph II of the Constitution. The Governor shall be chairman of the board, which shall meet upon the call of the chairman or

upon the call of any two members of the board. The chairman shall have a vote on all actions the same as the other members of the board and no action shall be taken without the affirmative vote of any two members of the board. (Ga. L. 1970, p. 640, § 1; Ga. L. 1983, p. 3, § 66.)

50-12-101. Assignment of numbers by board to proposed constitutional amendments and Constitutions; use of numbers by Secretary of State for election ballots; assignment of short titles or headings.

(a) The Constitutional Amendments Publication Board shall assign to each proposed constitutional amendment and proposed new Constitution a number, which shall be used for the purpose of publishing the amendments and the Constitution.

(b) The same number which shall be assigned by the board to each proposed amendment and new Constitution shall also be used by the Secretary of State when the Secretary of State shall determine the form of the ballot for each general election in which such proposals shall be submitted to the electors for ratification or rejection.

(c) The board shall also assign to each proposed constitutional amendment a short title or heading of no more than 15 words that shall describe in summary form the substance of the proposal. The Secretary of State shall cause such short title or heading to be printed in boldface at the beginning of each proposed constitutional amendment that appears on the ballot. (Ga. L. 1981, p. 116, § 1; Ga. L. 2001, p. 269, § 27; Ga. L. 2002, p. 415, § 50.)

Cross references. — Manner of amending Constitution of Georgia, Ga. Const. 1983, Art. X, Sec. I. Preparation, printing, publishing etc. of summary of general amendments to Constitution of Georgia, § 21-1-2.

Law reviews. — For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 96 (2001).

RESEARCH REFERENCES

Am. Jur. 2d. — 16 Am. Jur. 2d, Constitutional Law, § 29.

C.J.S. — 16 C.J.S., Constitutional Law, § 15 et seq.

ARTICLE 7

GEORGIA HALL OF FAME COMMISSION

50-12-110 through 50-12-112.

Reserved. Repealed by Ga. L. 2001, p. 873, § 26, effective July 1, 2001.

Editor's notes. — This article, consisting of Code Sections 50-12-110 through 50-12-112, relating to the Georgia Hall of Fame Commission, was based on Ga. L. 1974, p. 1636.

ARTICLE 8

GEORGIA COMMISSION ON THE HOLOCAUST

Editor's notes. — This article formerly consisted of Code Sections 50-12-130 through 50-12-137, relating to the Georgia Commission on State Growth Policy, which was enacted as Chapter 21 of Title 50 by Ga. L. 1982, p. 2261, § 1, redesignated as this article by Ga. L. 1983, p. 3, § 39, and amended by Ga. L. 1984, p. 381, §§ 1 through 4. The article was repealed pursuant to the terms of former Code Section 50-12-137, which provided for repeal effective June 30, 1985.

50-12-130. Creation of Georgia Commission on the Holocaust.

The General Assembly finds and declares that:

(1) During the period from 1933 through 1945, six million Jews and millions of other Europeans were murdered in Nazi concentration camps as part of a carefully orchestrated program of cultural, social, and political genocide known as the Holocaust;

(2) All people should remember the horrible atrocities committed at that time and other times in human history as the result of bigotry and tyranny and, therefore, should continually rededicate themselves to the principles of human rights and equal protection under the laws of a democratic society;

(3) It is desirable to educate our citizens about the events leading up to the Holocaust and about the organizations and facilities that were created and used purposefully for the systematic destruction of human beings;

(4) Holocaust history is the proper concern of all people, particularly students enrolled in the schools, colleges, and universities of the State of Georgia;

(5) Programs, workshops, institutes, seminars, exhibits, and other teacher-training activities for the study of the Holocaust have taken place during recent years at various middle schools, high schools, colleges, and universities in this state; and

(6) It is desirable to create a permanent state commission which, as an organized body and on a continuous basis, will survey, design, encourage, and promote implementation of Holocaust education and awareness programs in Georgia and will be responsible for organizing and promoting the memorialization of the Holocaust on a regular basis throughout the state. (Code 1981, § 50-12-130, enacted by Ga. L. 1998, p. 880, § 1.)

50-12-131. Membership; terms; qualifications; officers; quorum; powers and duties.

(a) There is created the Georgia Commission on the Holocaust in the executive branch of state government. The commission shall be assigned to the Office of the Secretary of State for administrative purposes only.

(b) The commission shall be composed of the following members:

(1) Ex officio members as follows:

(A) The State School Superintendent or the Superintendent's designee;

(B) The chancellor of the University System of Georgia or the chancellor's designee;

(C) The executive director of the Georgia Public Telecommunications Commission or the executive director's designee; and

(D) The commissioner of veterans service or the commissioner's designee; and

(2) Public members as follows:

(A) Five public members appointed by the Governor;

(B) Five public members appointed by the Speaker of the House of Representatives; and

(C) Five public members appointed by the President of the Senate.

(c) The public members of the commission shall be residents of this state and shall be appointed with due regard for broad geographic representation. Such public members should include but not be limited to:

(1) Individuals who have served prominently as spokespersons for or as leaders of organizations or corporations which serve members of religious, ethnic, national heritage, or social groups which were subjected to genocide, torture, wrongful deprivation of liberty or property, officially imposed or sanctioned violence, and other forms of human rights violations and persecution at the hands of the Nazis and their collaborators during the Nazi era;

(2) Individuals who are experienced in the field of Holocaust education;

(3) Individuals who represent liberators of victims of the Holocaust; or

(4) Lay persons who have an interest in Holocaust education.

(d) Public members of the commission shall be appointed for terms of five years each and until their respective successors are appointed and qualified. Public members shall be eligible for reappointment. The office of

any member of the commission who fails to attend more than two consecutive meetings of the commission without an excuse approved by a resolution of the commission shall become vacant. All vacancies shall be filled by appointment in the same manner as the original appointment, and the person so appointed to fill a vacancy shall serve for the remainder of the unexpired term.

(e) The commission shall have a chairperson who shall be appointed by the Governor for a term of five years and until his or her successor is appointed and qualified.

(f) Seven members of the commission shall constitute a quorum for the transaction of the business of the commission. Public members shall have the right to vote on any matter before the commission, but ex officio members and their designees shall not have the right to vote.

(g) The Speaker of the House of Representatives shall appoint a member of the House of Representatives and the President of the Senate shall appoint a member of the Senate to serve as advisers to the commission. (Code 1981, § 50-12-131, enacted by Ga. L. 1998, p. 880, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2007, p. 47, § 50/SB 103.)

The 2007 amendment, effective May 11, 2007, part of an Act to revise, modernize, and correct the Code, revised punctuation in the second sentence of subsection (f).

50-12-132. Annual reports; vacancies; advisory committees and advisors.

The commission shall:

(1) Provide, based upon the collective knowledge and experience of its members, assistance and advice to public and private schools, colleges, and universities with respect to the implementation of Holocaust education and awareness programs;

(2) Meet with appropriate education officials and other interested public and private organizations, including service organizations, for the purpose of providing information, planning, coordination, or modification of courses of study or programs dealing with the subject of the Holocaust;

(3) Survey and catalogue the extent of Holocaust and genocide education presently being incorporated into the curricula and taught in the educational system of this state;

(4) Inventory those Holocaust memorials, exhibits, and resources which could be incorporated into courses of study or programs at various locations and other educational agencies for the development and implementation of Holocaust and genocide education programs. In furtherance of this responsibility, the commission shall be authorized to

contact and cooperate with existing Holocaust and genocide public or private nonprofit resource organizations and may act as a liaison concerning Holocaust and genocide education to members of the United States Senate and House of Representatives, the Georgia Senate and House of Representatives, the United States Holocaust Memorial Museum, and other national and international Holocaust agencies;

(5) Compile a roster of individual volunteers who are willing to share their verifiable knowledge and experiences in classrooms, seminars, and workshops on the subject of the Holocaust. Such volunteers may be survivors of the Holocaust, liberators of concentration camps, scholars, members of the clergy, community relations professionals, and other persons who, by virtue of their experience, education, or interest, have experience with the Holocaust;

(6) Coordinate events memorializing the Holocaust and seek volunteers who are willing and able to participate in commemorative events that will enhance public awareness of the significance of the Holocaust;

(7) Prepare reports for the Governor and the General Assembly regarding its findings and recommendations to facilitate the inclusion of Holocaust studies and special programs memorializing the Holocaust in educational systems in this state; and

(8) Appoint advisory committees to advise the commission on the fulfillment of its duties. (Code 1981, § 50-12-132, enacted by Ga. L. 1998, p. 880, § 1.)

50-12-133. Commission authorized to solicit donations.

The commission is authorized to solicit and accept donations, contributions, grants, bequests, gifts of money and property, facilities, or services, with or without consideration, from any person, firm, or corporation or from any state, county, municipal corporation, or local government or governing body to enable it to carry out its functions and purpose. The commission is prohibited from paying or compensating any member of the General Assembly, directly or indirectly, any amount in excess of expenses. (Code 1981, § 50-12-133, enacted by Ga. L. 2001, p. 862, § 1.)

ARTICLE 9

WAR OF 1812 BICENTENNIAL COMMISSION

Effective date. — This article became effective May 14, 2008. provides for the repeal of this article effective December 31, 2015.

Editor's notes. — Code Section 50-12-147

50-12-140. (Repealed effective December 31, 2015) Short title.

This article shall be known and may be cited as the “War of 1812 Bicentennial Commission Act.” (Code 1981, § 50-12-140, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

50-12-141. (Repealed effective December 31, 2015) Legislative findings; commemorative activities to enhance public understanding of historical time period; purpose of commission; international involvement; promotion of tourism and economic development.

(a) The General Assembly finds and declares that the War of 1812 was a perilous time in our young nation’s history. The war was essentially fought over our nation’s sovereign right to free trade and the inviolability of our nation’s vessels on the high seas; it serves as a timeless reminder of the vulnerability of Georgia’s coastline and land borders to attack by elements of a hostile foreign power. During the war period, July 18, 1812, through February 18, 1815, there were 39 counties in Georgia: Baldwin, Bryan, Bulloch, Burke, Camden, Chatham, Clarke, Columbia, Effingham, Elbert, Emanuel, Franklin, Glynn, Greene, Hancock, Jackson, Jasper, Jefferson, Jones, Laurens, Liberty, Lincoln, Madison, McIntosh, Montgomery, Morgan, Oglethorpe, Pulaski, Putnam, Richmond, Screven, Tattnall, Telfair, Twiggs, Warren, Washington, Wayne, Wilkes, and Wilkinson; Emanuel was added on December 10, 1812. Although not designated within the borders of this state, there existed during the war period territory that would eventually be designated as counties of Georgia; in addition to which, new counties were created from existing counties, and some counties whose boundaries were later redefined were the site of historically significant activity during the War of 1812. Among those counties, but not specifically limited to those now mentioned, are: Appling, Bibb, Bleckley, Charlton, Coffee, Crawford, Crisp, Dodge, Dooly, Early, Lee, Monroe, Muscogee, Pierce, Talbot, Taylor, Ware, Wilcox, Worth, and Upson. While not all counties suffered combat, each of the 39 aforementioned counties contributed troops to the state militia; some had fortifications situated within their respective boundaries; and all had militia training grounds. Various regions of Georgia were affected by the War of 1812 in different ways: coastal regions were subject to combat with British forces, British raiding parties, and the interdiction of coastal shipping between the ports of Savannah and St. Marys; beyond Fort Hawkins (the present day City of Macon), Georgia settlers and troops were subject to raids by rebel elements of the Creek nation allied to Great Britain. Georgia territory occupied by British forces included Brunswick, Cumberland Island, Jekyll Island, St. Marys, and St. Simons Island. The same naval and military forces that burned Washington,

D.C., and attacked Fort McHenry, inspiring Francis Scott Key to write the poem which became known as the “Star Spangled Banner,” also invaded Cumberland Island, attacked St. Marys and the Battery at Cantonment Point Petre, and wreaked havoc along Georgia’s coast. The final combat between British military forces and American military forces, specifically the Georgia Militia, took place on the St. Marys River, near Coleraine, on February 23, 1815, and the final shots fired in anger between British naval forces and American naval forces in American territorial sea took place in Georgia waters on March 16, 1815, off Wassaw Island.

(b) The bicentennial commemoration period offers an excellent opportunity to enhance educational programs, add to the general knowledge of that era, and engender history and heritage based tourism within this state. Therefore, it is in the interest of this state to provide appropriate commemorative activities to maximize public understanding of the meaning of the War of 1812 in the history of Georgia.

(c) The purpose of the commission is to ensure a suitable state-wide observance of the War of 1812 by complementing, cooperating with, and providing assistance to the programs and activities of the various counties involved in the commemoration. The commission is to encourage War of 1812 observances that provide an excellent visitor experience and beneficial interaction between visitors and the natural and cultural resources of the various War of 1812 sites. The commission is to engage the state archeologist in compiling an inventory of War of 1812 archeological assets on land and in waters under Georgia jurisdiction or control and work in concert with the appropriate federal government agencies when warranted to accomplish that goal.

(d) The commission is also to welcome international involvement in the War of 1812 observances; contribute to, coordinate with, participate in, and enhance the activities of the National War of 1812 Bicentennial Commission; foster and promote the protection of War of 1812 resources; and assist in the appropriate development of heritage and history based tourism and economic benefits to the State of Georgia. (Code 1981, § 50-12-141, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

50-12-142. (Repealed effective December 31, 2015) Definitions.

As used in this article, the term:

(1) “Commemoration” means commemoration of the War of 1812.

(2) “Commission” means the War of 1812 Bicentennial Commission established in this article.

(3) “Commissioner” means the commissioner of natural resources.

(4) “Counties” means those counties mentioned in subsection (a) of Code Section 50-12-141, to wit: Appling, Baldwin, Bibb, Bleckley, Bryan, Bulloch, Burke, Camden, Charlton, Chatham, Clarke, Coffee, Columbia, Crawford, Crisp, Dodge, Dooly, Early, Effingham, Elbert, Emanuel, Franklin, Glynn, Greene, Hancock, Jackson, Jasper, Jefferson, Jones, Laurens, Lee, Liberty, Lincoln, Madison, McIntosh, Montgomery, Monroe, Morgan, Muscogee, Oglethorpe, Pierce, Pulaski, Putnam, Richmond, Screven, Talbot, Tattnall, Taylor, Telfair, Twiggs, Ware, Warren, Washington, Wayne, Wilcox, Wilkes, Wilkinson, Worth, and Upson, and includes agencies and entities of each county.

(5) “Qualified resident” means any resident of the State of Georgia with an interest in, support for, and expertise appropriate to the commemoration. (Code 1981, § 50-12-142, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor’s notes. — See the Editor’s note following the article heading as to the repeal of this Code section.

50-12-143. (Repealed effective December 31, 2015) Membership and structure of commission; responsibilities.

(a) The commission shall be composed of 28 members as follows:

(1) Thirteen members shall be qualified residents appointed by the commissioner after consideration of nominations submitted by the county commissioners of Baldwin, Bibb, Camden, Chatham, Crawford, Crisp, Fulton, Glynn, Liberty, McIntosh, Pulaski, Telfair, and Twiggs counties;

(2) Three members shall be qualified residents appointed by the commissioner after consideration of nominations submitted by the mayors of the City of Savannah, City of Macon, and the City of St. Marys;

(3) Three members shall be employees of the Department of Natural Resources appointed by the Governor;

(4) One shall be an employee of the Georgia Department of Defense;

(5) One shall be an employee of the Department of Economic Development, Tourism Division;

(6) One shall be an employee of the University System of Georgia from a department of history;

(7) One shall be an employee of the Department of Education;

(8) Four shall be qualified residents appointed by the commissioner, of whom:

(A) One shall be recommended by the majority leader of the Senate;

(B) One shall be recommended by the minority leader of the Senate;

(C) One shall be recommended by the majority leader of the House of Representatives; and

(D) One shall be recommended by the minority leader of the House of Representatives; and

(9) One member shall be appointed by the commissioner from among individuals with experience in the history of the War of 1812.

(b) Those residents of Georgia nominated by the Governor to serve on the National War of 1812 Bicentennial Commission shall ensure the coordination of efforts by the State of Georgia War of 1812 Bicentennial Commission with the efforts of the National War of 1812 Bicentennial Commission.

(c) The appointments of members of the commission shall be made not later than September 11, 2008.

(d) A member shall be appointed for the life of the commission.

(e) A vacancy on the commission:

(A) Shall not affect the powers of the commission; and

(B) Shall be filled in the same manner as the original appointment was made.

(f) The commission shall act only on an affirmative vote of a majority of the members of the commission.

(g) A majority of the members of the commission shall constitute a quorum.

(h) The commission shall select a chairperson and a vice chairperson from among the members of the commission.

(i) The commission shall hold its initial meeting no later than 60 days after the date on which all members of the commission have been appointed.

(j) During the years 2008 through 2011, not less than three times a year the commission shall meet at the call of the chairperson or a majority of the members of the commission.

(k) During the years 2012 through 2015, not less than two times a year the commission shall meet at the call of the chairperson or a majority of the members of the commission.

(1) The commission shall:

(1) Plan, encourage, develop, execute, and coordinate programs, observances, and activities commemorating the historic events that preceded and are associated with the War of 1812;

(2) Facilitate the commemoration throughout the State of Georgia;

(3) Coordinate the activities of the commission with appropriate private, city, and federal agencies including, but not limited to, the National Park Service and the federal Department of Defense;

(4) Encourage civic, patriotic, historical, educational, religious, economic, tourism, and other organizations throughout the State of Georgia to organize and participate in the commemoration to expand the understanding and appreciation of the significance of the War of 1812;

(5) Provide technical assistance to counties, cities, localities, the Department of Natural Resources, and nonprofit organizations to further the commemoration and commemorative events;

(6) Subject to available funds, direct the following regional development centers to coordinate the efforts of the participating counties within their respective regions: Coastal Georgia, Central Savannah River, Heart of Georgia, Atlanta Regional Commission, Southeast Georgia, Northeast Georgia, Middle Georgia, Middle Flint Lower Chattahoochee, South Georgia, and Southwest Georgia;

(7) Subject to available funds, direct the aforementioned regional development centers to provide a calendar of events to the state Departments of Transportation, Economic Development, and Education no later than six months prior to the event date;

(8) Design, develop, and provide, during the commemoration period January 1, 2012, through May 30, 2015, for the purposes of education and tourism, a website that shall include a calendar of commemoration festivities state wide and an explanation of events preceding and associated with the War of 1812 as it was prosecuted on Georgia soil, in Georgia waters, and by military and naval units associated with the State of Georgia deployed in other states or territories;

(9) Design, develop, and provide, during the commemoration period January 1, 2012, through May 30, 2015, an exhibit that will travel throughout the state to interpret events of the War of 1812 for the educational benefit of the residents of and tourists to the State of Georgia;

(10) Subject to available funds, direct the state archeologist to produce an inventory of historically significant structures and, upon completion of said inventory, execute surveys of sites associated with the War of 1812;

(11) Subject to available funds, direct the state archeologist to produce, with the assistance of a state historian, an inventory of historically significant shipwrecks in Georgia waters and, upon completion of said inventory, with the cooperation of appropriate state and federal agencies, execute surveys of significant shipwrecks associated with the War of 1812 in Georgia waters;

(12) Subject to available funds, direct a state historian to provide not later than July 18, 2011, information relating the location of battle-grounds, fortifications, historic sites, routes, trails, and other places of interest to the State Department of Transportation so that agency may produce a "War of 1812 Trail" map which shall be made available for the Georgia War of 1812 Bicentennial period: July 18, 2012, through March 16, 2015;

(13) Subject to available funds, direct a state historian to compile for distribution to appropriate state historic sites and Georgia schools a pamphlet including the biographies of notable War of 1812 era Georgians: citizens, military figures, political figures, and namesakes for Georgia counties;

(14) Ensure that the War of 1812 commemorations provide a lasting legacy and long-term public benefit leading to protection of the natural and cultural resources associated with the War of 1812; and

(15) Examine and review essential facilities and infrastructure at War of 1812 sites and enable necessary improvements to enhance and maximize visitor experience at the sites.

(m) The commission shall prepare a strategic plan and annual performance plans for any activity carried out by the commission under this article.

(n) The commission shall have no authority to obligate state funds or to require any unit of state or local government to expend or obligate funds. Where any provisions of this article make any power or duty of the commission subject to availability of funding, such provisions are intended to make the exercise of such power or duty contingent on the commission having received grants, donations, or contract funds sufficient for such purpose. (Code 1981, § 50-12-143, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "September 11, 2008" was substituted for "120 days after the date of enactment of this article" at the end of subsection (c).

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-144. (Repealed effective December 31, 2015) Reporting on gifts, bequests or devises received; final report.

(a) The commission shall submit to the General Assembly an annual report that contains a list of each gift, bequest, or devise to the commission or a member of the commission with a value of more than \$250.00, together with the identity of the donor of each gift, bequest, or devise.

(b) Not later than September 30, 2015, the commission shall submit to the commissioner and the General Assembly a final report that includes:

(1) A summary of the activities of the commission;

(2) A final accounting of any funds received or expended by the commission; and

(3) The final disposition of any historically significant item acquired by the commission and other properties not previously reported. (Code 1981, § 50-12-144, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-145. (Repealed effective December 31, 2015) Authority of commission.

(a) The commission may:

(1) Solicit, accept, use, and dispose of gifts or donations of money, services, and real and personal property related to the commemoration;

(2) Appoint such advisory committees as the commission determines to be necessary to carry out this article;

(3) Authorize any member or employee of the commission to take any action the commission is authorized to take under this article;

(4) Use the United States mails in the same manner and under the same conditions as other agencies of the state government; and

(5) Make grants to communities, nonprofit commemorative commissions or organizations, and research and scholarly organizations to develop programs and products to assist in researching, publishing, marketing, and distributing information relating to the commemoration.

(b) In carrying out this Code section, the commission may:

(1) Procure supplies, services, and property; and

(2) Make or enter into contracts, leases, or other legal agreements.

(c) Any contract, lease, or other legal agreement made or entered into by the commission shall not extend beyond the date of termination of the commission.

(d) The commission may secure directly from a state agency such information as the commission considers to be necessary to carry out this Code section and, upon request of the chairperson of the commission, the head of the agency shall provide information to the commission. (Code 1981, § 50-12-145, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-146. (Repealed effective December 31, 2015) Compensation of members, executive director, and other personnel.

(a) Except as provided in subsection (b) of this Code section, a member of the commission shall serve without compensation.

(b) A member of the commission who is an officer or employee of the State of Georgia shall serve without compensation in addition to the compensation received for the services of the member as an officer or employee of the State of Georgia.

(c) Subject to available funds, a member of the commission shall be allowed travel expenses, including per diem in lieu of subsistence, at rates authorized for an employee of an agency under the law while away from the home or regular place of business of the member in the performance of the duties of the commission.

(d) Subject to available funds, the chairperson of the commission may, without regard to merit system laws, including regulations, appoint and terminate an executive director and such other additional personnel as are necessary to enable the commission to perform the duties of the commission.

(e) Subject to available funds, the employment of an executive director shall be subject to confirmation by the commission.

(f) Subject to available funds, the chairperson of the commission may fix the compensation of the executive director and other personnel without regard to the provisions of the law relating to classification of positions and general schedule pay rates.

(g) At the request of the commission and subject to available funds, the head of any state agency may assign, on a reimbursable or nonreimbursable basis, any of the personnel of the agency to the commission to assist the commission in carrying out the duties of the commission under this article.

(h) The assignment of an employee under subsection (g) of this Code section shall be without loss of merit system status or privilege.

(i) The commission may:

(1) Accept the services of personnel assigned from counties and cities; and

(2) Subject to available funds, reimburse counties and cities for the services of assigned personnel.

(j) The commission may accept and use such voluntary and uncompensated services as the commission determines necessary.

(k) Subject to available funds, the commissioner shall provide to the commission, on a reimbursable basis, such administrative support services as the commission may request.

(l) Subject to available funds, the chairperson of the commission may procure temporary and intermittent services at rates for individuals that do not exceed the daily equivalent of the annual rate.

(m) Nothing in this Code section supersedes the authority of the counties or the Department of Natural Resources concerning the commemoration.

(n) Nothing in this article shall be construed to require state appropriations. (Code 1981, § 50-12-146, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

Editor's notes. — See the Editor's note following the article heading as to the repeal of this Code section.

50-12-147. (Repealed effective December 31, 2015) Termination.

(a) The commission shall terminate on December 31, 2015.

(b) Not later than the date of termination, the commission shall transfer any documents, materials, books, manuscripts, miscellaneous printed matter, memorabilia, relics, and exhibits and any materials donated to the commission that relate to the War of 1812 to the Fort Morris (Fort Defiance) State Historic Site.

(c) Any funds held by the commission on the date of termination shall be deposited in the general fund of the treasury.

(d) This article shall stand repealed in its entirety on December 31, 2015. (Code 1981, § 50-12-147, enacted by Ga. L. 2008, p. 730, § 1/HB 953.)

CHAPTER 13

ADMINISTRATIVE PROCEDURE

Article 1		Sec.	
General Provisions			
Sec.			exceptions and present briefs and arguments.
50-13-1.	Short title; purpose.	50-13-17.	Initial decisions in contested cases; review of initial decisions; final decisions and orders; Public Service Commission exceptions.
50-13-2.	Definitions.		
50-13-3.	Adoption of rules of organization and practice; public inspection and validity of rules, policies, orders, decisions, and opinions.	50-13-18.	Procedure upon grant, denial, renewal, revocation, suspension, annulment, or withdrawal of licenses.
50-13-4.	Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.	50-13-19.	Judicial review of contested cases.
50-13-5.	Filing of previously adopted rules.	50-13-20.	Review of final judgment.
50-13-6.	Rules not effective until 20 days after filed with Secretary of State; maintenance of record of the rules; exceptions; rules governing manner and form of filing.	50-13-20.1.	Judicial review of final decision in contested case issued by administrative law judge.
50-13-7.	Secretary of State to publish compilation of rules and quarterly bulletin.	50-13-21.	Compliance with filing and hearing requirements by Safety Fire Commissioner and Commissioner of Insurance.
50-13-8.	Judicial notice of rules.	50-13-22.	Construction of chapter.
50-13-9.	Petition for promulgation, amendment, or repeal of rule; agency response.	50-13-23.	Determining date when documents received by or filed with agencies.
50-13-9.1.	Variances or waivers to rules.		
50-13-10.	Declaratory judgment on validity of rules; venue for actions.		
50-13-11.	Declaratory rulings by agencies.		
50-13-12.	Department of Revenue to hold hearing when demanded by aggrieved taxpayer; election of remedies.		
50-13-13.	Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.		
50-13-14.	Intervention in contested cases.		
50-13-15.	Rules of evidence in contested cases; official notice; conducting hearings by utilizing remote telephonic communications.		
50-13-16.	Proposal for decision in contested cases; opportunity to file		

Article 2

Office of State Administrative Hearings

50-13-40.	Office created; chief state administrative law judge.
50-13-41.	Hearing procedures; powers of administrative law judge; issuance of decision; review.
50-13-42.	Applicability of article.
50-13-43.	Agencies to cooperate with chief state administrative law judge; Office of State Administrative Hearings to comply with federal law; rules and regulations.
50-13-44.	Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

Cross references. — Monthly meetings of county boards of education, § 20-2-58. Administrative procedure before Department of Human Services and county boards of health, § 31-5-1 et seq. Conducting of hearings by Commissioner of Insurance, § 33-2-17 et seq. Administrative proceedings before Department of Human Services and county boards of health pursuant to enforcement of mental health laws, § 37-1-50 et seq. Uniform property tax administration and equalization, § 48-5-260 et seq.

Law reviews. — For survey of Eleventh Circuit decisions covering law applicable to administrative agencies, see 35 Mercer L. Rev. 1029 (1984). For annual survey of administrative law, see 36 Mercer L. Rev. 393 (1984). For article surveying recent develop-

ments in administrative law, see 37 Mercer L. Rev. 503 (1985). For article, "The Office of Legislative Counsel," see 23 Ga. St. B.J. 114 (1987). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For article surveying recent developments in administrative law, see 39 Mercer L. Rev. 33 (1987). For article, "State Administrative Agency Contested Case Hearings," see 24 Ga. St. B.J. 193 (1988). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For survey article on administrative law for the period June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 35 (2003). For survey article on appellate practice and procedure, see 60 Mercer L. Rev. 21 (2008).

JUDICIAL DECISIONS

Proceedings of city's board of zoning adjustment. — O.C.G.A. Ch. 13, T. 50 does not apply to proceedings of city's board of zoning adjustment (BZA) because the Act applies only to state agencies, and the BZA is a creature of local law. *LaFave v. City of Atlanta*, 258 Ga. 631, 373 S.E.2d 212 (1988).

State Personnel Board decision. — Where plaintiff, who was demoted by plaintiff's employer, Georgia Retardation Center, a division of the Department of Human Resources (DHR), pursued plaintiff's administrative remedies, culminating in the denial of plaintiff's appeal by the State Personnel Board, and then petitioned the superior court for judicial review, it was held that plaintiff's employer was governed by the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., but the decision of which plaintiff sought review was one made not by DHR but by the State Personnel Board, which is not governed by the APA, but by the provisions of O.C.G.A. § 45-20-1 et seq. relating to the State Personnel Board. *Duval v. Department of Human Resources*, 183 Ga. App. 726, 359 S.E.2d 756 (1987).

Due process required at hearings. — The Georgia Administrative Procedure Act, § 50-13-1 et seq., requires one holding a hearing (anything beyond a "preliminary investigation") to afford notice, right to counsel, right to present evidence, power of subpoena, and other elements of due process with an opportunity for final judicial review. *Caldwell v. Bateman*, 252 Ga. 144, 312 S.E.2d 320 (1984).

Motor carrier's certificate of convenience and necessity. — The administrative procedure applicable on an application for, or a proceeding to amend, a motor carrier's certificate of convenience and necessity is not that prescribed by the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., in view of Ga. L. 1975, p. 404, which made the Public Service Commission otherwise subject to O.C.G.A. Ch. 13, T. 50 except as to any rate, charge, classification, service hearing, procedure or matter pertaining to any motor contract carrier, motor common carrier, or railroad. The applicable procedure is that established by O.C.G.A. § 46-2-51. *RTC Transp., Inc. v. Georgia Pub. Serv. Comm'n*, 165 Ga. App. 539, 301 S.E.2d 896 (1983).

OPINIONS OF THE ATTORNEY GENERAL

State Ethics Commission. — There is no statutory provision in O.C.G.A. Ch. 13, T. 50

or in O.C.G.A. § 50-14-3 which would authorize the State Ethics Commission to deliber-

ate in closed session after hearing evidence in a contested case. 1989 Op. Att'y Gen. No. 89-6.

Georgia Fire Academy is not an agency for purposes of Ga. L. 1964, p. 338, § 1 et seq.

(see O.C.G.A. Ch. 13, T. 50) and, as a result, is not required to follow the procedure for adoption of rules as set forth in that law in developing a course of instruction. 1980 Op. Att'y Gen. No. U80-52.

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

50-13-1. Short title; purpose.

This chapter shall be known and may be cited as the “Georgia Administrative Procedure Act.” It is not intended that this chapter create or diminish any substantive rights or delegated authority, but this chapter is meant to provide a procedure for administrative determination and regulation where expressly authorized by law or otherwise required by the Constitution or a statute of this state. (Ga. L. 1964, p. 338, § 1; Ga. L. 1965, p. 283, § 1.)

Law reviews. — For article advocating consistency in statutory provisions governing review of administrative conduct in Georgia, prior to the enactment of O.C.G.A. Ch. 13, T. 50, see 15 Ga. B.J. 153 (1952). For article discussing procedural problems with judicial review of administrative conduct in Georgia prior to the enactment of O.C.G.A. Ch. 13, T. 50, see 15 Ga. B.J. 297 (1953). For article, “The Georgia Uniform Procedure Act,” see

1 Ga. St. B.J. 269 (1964). For article discussing Georgia administrative law during 1975 to 1977, see 29 Mercer L. Rev. 1 (1977). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

For note discussing application of procedural due process requirements to hearings by administrative tribunals, see 32 Mercer L. Rev. 359 (1980).

JUDICIAL DECISIONS

Exhaustion of administrative remedies. — The intent of the legislature was to provide by Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) an administrative procedure to resolve conflicts within the authority vested in administrative agencies and boards by statute without resort to courts of record in the first instance. Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976).

Alternative remedy available. — Trial court properly denied the defendant’s amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under

both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq.; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the division promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. Palmaka v. State, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Civil Practice Act was inapplicable to pro-

ceedings under the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976).

Provisions strictly construed. — Ga. L. 1937, p. 806 (see O.C.G.A. § 34-8-222) and the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq., are in derogation of common law and must be strictly construed. Caldwell v. Corbin, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Administrative review precludes equitable relief. — Where a statute provides a party with a means of review by an administrative agency, such procedure is generally an adequate remedy at law so as to preclude the grant of equitable relief. Brogdon v. State Bd. of Veterinary Medicine, 244 Ga. 780, 262 S.E.2d 56 (1979).

Hearings on suspension of driver's license for refusal to submit to breath test. — See

Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

Cited in Hood v. Rice, 120 Ga. App. 691, 172 S.E.2d 170 (1969); Department of Pub. Safety v. Byars, 127 Ga. App. 190, 192 S.E.2d 926 (1972); O'Neal v. Georgia Real Estate Comm'n, 129 Ga. App. 211, 199 S.E.2d 362 (1973); Sumter County Bd. of Educ. v. Mosley, 147 Ga. App. 478, 249 S.E.2d 284 (1978); Keramidas v. Department of Human Resources, 147 Ga. App. 820, 250 S.E.2d 560 (1978); Hicks v. Georgia State Bd. of Pharmacy, 553 F. Supp. 314 (N.D. Ga. 1982); Johnsen v. Collins, 875 F. Supp. 1571 (S.D. Ga. 1994); Brown v. Barrow, 512 F.3d 1304 (11th Cir. 2008); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008); Atmos Energy Corp. v. Ga. PSC, 290 Ga. App. 243, 659 S.E.2d 385 (2008); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Purpose and intent of the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1, is not to create additional substantive requirements in what is cause for revocations of a license by an administrative agency; rather, the purpose and intent of that law is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the law applies. 1965-66 Op. Att'y Gen. No. 65-73.

Licensee momentarily complying but with history of noncompliance. — Administrative

agency may proceed to revoke license of licensee in conformity with the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of the license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in non-compliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in non-compliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 1A Am. Jur. Pleading and Practice Forms, Administrative Law, § 1 et seq.

50-13-2. Definitions.

As used in this chapter, the term:

(1) "Agency" means each state board, bureau, commission, department, activity, or officer authorized by law expressly to make rules and regulations or to determine contested cases, except the General Assem-

bly; the judiciary; the Governor; the State Board of Pardons and Paroles; the State Financing and Investment Commission; the State Properties Commission; the Board of Bar Examiners; the Board of Corrections and its penal institutions; the State Board of Workers' Compensation; all public authorities except as otherwise expressly provided by law; the State Personnel Board (Merit System); the Department of Administrative Services or commissioner of administrative services; the Technical College System of Georgia; the Department of Revenue when conducting hearings relating to alcoholic beverages; the Georgia Tobacco Community Development Board; the Georgia Higher Education Savings Plan; any school, college, hospital, or other such educational, eleemosynary, or charitable institution; or any agency when its action is concerned with the military or naval affairs of this state. The term "agency" shall include the State Board of Education and Department of Education, subject to the following qualifications:

(A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid rules adopted by the State Board of Education and Department of Education prior to January 1, 1990, are ratified and validated and shall be effective until January 1, 1991, whether or not such rules were adopted in compliance with the requirements of this chapter; and

(B) Effective January 1, 1991, any rule of the State Board of Education or Department of Education which has not been proposed, submitted, and adopted in accordance with the requirements of this chapter shall be void and of no effect.

(2) "Contested case" means a proceeding, including, but not restricted to, rate making, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing.

(2.1) "Electronic" means, without limitation, analog, digital, electronic, magnetic, mechanical, optical, chemical, electromagnetic, electromechanical, electrochemical, or other similar means.

(3) "License" means the whole or part of any agency permit, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license.

(3.1) "Mailed" includes electronic means of communication.

(3.2) "Mailing list" includes electronic means of distribution.

(4) "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

(5) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

(5.1) "Record" means information created, transmitted, received, or stored either in human perceivable form or in a form that is retrievable in human perceivable form.

(6) "Rule" means each agency regulation, standard, or statement of general applicability that implements, interprets, or prescribes law or policy or describes the organization, procedure, or practice requirements of any agency. The term includes the amendment or repeal of a prior rule but does not include the following:

(A) Statements concerning only the internal management of an agency and not affecting private rights or procedures available to the public;

(B) Declaratory rulings issued pursuant to Code Section 50-13-11;

(C) Intra-agency memoranda;

(D) Statements of policy or interpretations that are made in the decision of a contested case;

(E) Rules concerning the use or creation of public roads or facilities, which rules are communicated to the public by use of signs or symbols;

(F) Rules which relate to the acquiring, sale, development, and management of the property, both real and personal, of the state or of an agency;

(G) Rules which relate to contracts for the purchases and sales of goods and services by the state or of an agency;

(H) Rules which relate to the employment, compensation, tenure, terms, retirement, or regulation of the employees of the state or of an agency;

(I) Rules relating to loans, grants, and benefits by the state or of an agency; or

(J) The approval or prescription for the future of rates or prices. (Ga. L. 1964, p. 338, § 2; Ga. L. 1965, p. 283, §§ 2-4; Ga. L. 1975, p. 404, § 3; Ga. L. 1980, p. 1573, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 1463, §§ 6, 13; Ga. L. 1985, p. 283, § 1; Ga. L. 1990, p. 794, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 404, § 1; Ga. L. 1997, p. 695, § 1; Ga. L. 1999, p. 721, § 2; Ga. L. 2000, p. 1619, § 1; Ga. L. 2001, p. 76, § 4; Ga. L. 2005, p. 175, § 3/HB 98; Ga. L. 2008, p. 335, § 10/SB 435.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in the first sentence of the introductory language in paragraph (1).

Editor’s notes. — Ga. L. 1975, p. 404, § 9, not codified by the General Assembly, provides that nothing contained within that Act shall apply to any rate, charge, classification, service, hearing, procedure, or matter which shall pertain to any motor contract carrier, motor common carrier, or railroad.

Ga. L. 2005, p. 175, § 1, not codified by

the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Georgia Land Conservation Act.’”

Law reviews. — For article “Administrative Law,” see 53 Mercer L. Rev. 81 (2001). For article on 2005 amendment of this Code section, see 22 Ga. St. U.L. Rev. 185 (2005). For article, “The Status of Administrative Agencies under the Georgia Constitution,” see 40 Ga. L. Rev. 1109 (2006).

For note on the 2001 amendment to this Code section, see 18 Ga. St. U.L. Rev. 84 (2001).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

AGENCY

1. INCLUDED
2. EXCLUDED

CONTESTED CASE

BENEFITS

General Consideration

Ga. L. 1965, p. 283, § 10 (see O.C.G.A. § 50-13-10) must be construed in conjunction with Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2). Irvin v. Woodliff, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

Successful intervenor retains status as mere “intervenor.” — One who successfully seeks to intervene in an agency proceeding pursuant to the general provisions of O.C.G.A. Ch. 13, T. 50 retains status of a mere “intervenor” throughout. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff’d, 255 Ga. 253, 336 S.E.2d 790 (1985).

Department manual not “rule” subject to review in declaratory judgment action. — Department of Medical Assistance (now Department of Community Health) manual, which contained “the terms and conditions for receipt of medical assistance reimbursement in Georgia,” was not a “rule” and therefore could not be reviewed in a declaratory judgment action. Georgia Dep’t of Medical Assistance v. Beverly Enters., Inc., 261 Ga. 59, 401 S.E.2d 499 (1991).

Commissioner’s requirement not rule. — Insurance commissioner’s requirement that an insurer include an interest assumption in calculating the insurers’ loss projections,

when applying for a rate increase, was a statement of policy or an interpretation made in the context of a contested case, which was an exception to the definition of a rule under O.C.G.A. § 50-13-2(6)(D). United Am. Ins. Co. v. Ins. Dep’t of Ga., 258 Ga. App. 735, 574 S.E.2d 830 (2002).

Challenged practice was not a rule. — Trial court erred in granting summary judgment to the two associations on their declaratory judgment action and finding that the state revenue department’s prohibition of the practice of “split deliveries” was improper as the challenged practice was not a rule under the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and was not subject to a declaratory judgment action. Ga. Oilmen’s Ass’n v. Ga. Dep’t of Revenue, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

Notice requirements. — Healthcare provider did not show that the state community health department committed an error of law in issuing a cease and desist letter directing the healthcare provider to stop operating the provider’s diagnostic imaging center until the healthcare provider obtained a certificate of need; the letter of nonreviewability the healthcare provider cited was not a form of permission required by law and, thus, the revocation of the letter,

General Consideration (Cont'd)

which triggered the need for the certificate of need, was not subject to the notice requirements of O.C.G.A. § 50-13-18(c). *N. Atlanta Scan Assocs. v. Dep't of Cmty. Health*, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Cited in *Orkin Exterminating Co. v. Blackmon*, 229 Ga. 146, 190 S.E.2d 43 (1972); *Georgia State Bd. of Pharmacy v. Bennett*, 126 Ga. App. 307, 190 S.E.2d 788 (1972); *Pope v. Cokinos*, 231 Ga. 79, 200 S.E.2d 275 (1973); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Cantrell v. Board of Trustees of Employees' Retirement Sys.*, 135 Ga. App. 445, 218 S.E.2d 97 (1975); *Kirton v. Biggers*, 135 Ga. App. 416, 218 S.E.2d 113 (1975); *Georgia State Bd. of Dental Exmrs. v. Daniels*, 137 Ga. App. 706, 224 S.E.2d 820 (1976); *Allen v. State Personnel Bd.*, 140 Ga. App. 747, 231 S.E.2d 826 (1976); *Department of Pub. Safety v. Murphy*, 145 Ga. App. 824, 245 S.E.2d 169 (1978); *Keramidas v. Department of Human Resources*, 147 Ga. App. 820, 250 S.E.2d 560 (1978); *Metropolitan Atlanta Rapid Transit Auth. v. Wallace*, 243 Ga. 491, 254 S.E.2d 822 (1979); *Bradford v. Davidson*, 150 Ga. App. 625, 258 S.E.2d 235 (1979); *Dix v. State*, 156 Ga. App. 868, 275 S.E.2d 807 (1981); *Bituminous Cas. Corp. v. United Servs. Auto. Ass'n*, 158 Ga. App. 739, 282 S.E.2d 198 (1981); *Caldwell v. Liberty Mut. Ins. Co.*, 248 Ga. 282, 282 S.E.2d 885 (1981); *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983); *Schieffelin & Co. v. Strickland*, 253 Ga. 385, 320 S.E.2d 358 (1984); *State v. Strickman*, 173 Ga. App. 1, 325 S.E.2d 775 (1984); *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990); *Tompkins v. Board of Regents of Univ. Sys.*, 262 Ga. 208, 417 S.E.2d 153 (1992).

Agency

1. Included

Applicability of judicial review. — The manner of judicial review provided by the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) is made applicable to the "several

public entities" as defined by Ga. L. 1973, p. 512, § 2 (see O.C.G.A. § 22-4-2) as well as to those entities defined as an "agency" by Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). *Wirt v. Metropolitan Atlanta Rapid Transit Auth.*, 139 Ga. App. 592, 229 S.E.2d 100 (1976).

Required judicial notice. — Neither the Department of Motor Vehicle Safety (DMVS) nor the Public Service Commission (PSC) fall within the group of government entities explicitly excluded by O.C.G.A. § 50-13-2(1) from the Administrative Procedure Act's (APA) provisions; thus, the rules and the regulations promulgated pursuant to the APA by DMVS or the PSC and thereafter properly adopted by DMVS are required to be judicially noticed by the courts. *State v. Ponce*, 279 Ga. 651, 619 S.E.2d 682 (2005).

Changes in definition of "agency." — "Several public entities" and the "agency" being alternative categories, amendments to the definition of "agency" will not influence the applicability of the Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) to an entity which falls within the "several public entities" category. *Wirt v. Metropolitan Atlanta Rapid Transit Auth.*, 139 Ga. App. 592, 229 S.E.2d 100 (1976).

Department of Human Resources is "agency" within meaning of this section. *Department of Human Resources v. Williams*, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Methods of chemical analysis of person arrested for DUI. — In light of O.C.G.A. § 40-5-55(a), implementation of O.C.G.A. § 40-6-392(a)(1) concerns and affects both the internal management of the Division of Forensic Sciences and private rights and procedures available to the public, despite the apparent exemption from coverage by the Administrative Procedure Act pursuant to O.C.G.A. § 50-13-2(6)(A). *State v. Holton*, 173 Ga. App. 241, 326 S.E.2d 235 (1984).

Educational administrative bodies. — The exclusion of "any school, college, hospital, or other such educational, eleemosynary, or charitable institution" from the definition of "agency" was intended to apply only to those institutions which provide educational or charitable services directly and not to the administrative bodies through which they

are regulated. *Department of Educ. v. Kitchens*, 193 Ga. App. 229, 387 S.E.2d 579 (1989) (decided prior to 1990 amendment).

Georgia Institute of Technology as a "school or college," is an agency within the meaning of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-2(1). *Bd. of Regents of the Univ. Sys. of Ga. v. Houston*, 282 Ga. App. 412, 638 S.E.2d 750 (2006).

State Board of Education and Department of Education are included within the definition of "agency" and are not included within the list of exclusions. *Department of Educ. v. Kitchens*, 193 Ga. App. 229, 387 S.E.2d 579 (1989) (decided prior to 1990 amendment).

2. Excluded

School appeals do not fall within the ambit of O.C.G.A. Ch. 13, T. 50. *Rabon v. Bryan County Bd. of Educ.*, 173 Ga. App. 507, 326 S.E.2d 577, cert. denied, 474 U.S. 855, 106 S. Ct. 160, 88 L. Ed. 2d 133 (1985) (decided prior to 1990 amendment).

Inapplicability when State Board of Education sits as appellate body. — Georgia Administrative Procedure Act, Ga. L. 1964, p. 338, § 1 et seq., does not apply to the State Board of Education when the board sits as an appellate body and does not decide the controversy de novo but bases its appellate decision on the evidence heard by the local board. *Palmer v. State Bd. of Educ.*, 143 Ga. App. 315, 238 S.E.2d 255 (1977), cert. dismissed, 240 Ga. 591, 241 S.E.2d 837 (1978) (decided prior to 1990 amendment).

A local board of education is not included within any of the definitions of "agency" contained in the Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, and is thus outside its scope. *Lansford v. Cook*, 252 Ga. 414, 314 S.E.2d 103 (1984).

City board of education is not included within any definition of "agency" contained in this section. *Hood v. Rice*, 120 Ga. App. 691, 172 S.E.2d 170 (1969), cert. denied, 397 U.S. 1070, 90 S. Ct. 1514, 25 L. Ed. 2d 693 (1970).

Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), **does not apply to State Personnel Board** and it appears that no other statute, rule, or regulation requires the Personnel Board to make specific findings and conclusions. *Department of Cors. v.*

Hemphill, 134 Ga. App. 65, 213 S.E.2d 169 (1975).

Regulation of alcoholic beverages. — Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), is apparently not applicable to regulation of liquor and alcoholic beverages. *Blackmon v. Alexander*, 233 Ga. 832, 213 S.E.2d 842 (1975).

County boards of health. — Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, does not apply to county boards of health as these boards are not included within the definition of "agency." *Aldridge v. Georgia Hospitality & Travel Ass'n*, 251 Ga. 234, 304 S.E.2d 708 (1983).

Decisions by Georgia Board of Pardons and Paroles. — In a case in which the appropriate way to challenge a decision by the Georgia Board of Pardons and Paroles (Board) denying parole was to file a writ of mandamus because, under O.C.G.A. § 50-13-2(1), the Board was explicitly exempted from the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1, and appellant inmate's state mandamus petition was filed after the one-year limitations period in the Antiterrorism and Effective Death Penalty Act of 1996, Pub. L. No. 104-132, 110 Stat. 1214 (1996), had run, the inmate's 28 U.S.C. § 2254 petition was untimely. *Brown v. Barrow*, 512 F.3d 1304 (11th Cir. 2008).

Contested Case

"Standing to challenge" and judicial review in "contested case." — The "standing to challenge" an administrative decision is what is intended to be established by the requirement in Ga. L. 1980, p. 820, § 1 (see O.C.G.A. § 50-13-19) that the judicial review be of a "contested case"; and that is what is meant to be described by the language of Ga. L. 1980, p. 1573, § 2 (see O.C.G.A. § 50-13-2). *National Council on Comp. Ins. v. Caldwell*, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Trial court did not err in dismissing a retailer's petition for judicial review of the orders entered on an investigatory docket proceeding by the Georgia Public Service Commission as it was not a contested case permitting review under O.C.G.A. § 50-13-19(a); further, this disposition did not prevent the retailer in pursuing a rem-

Contested Case (Cont'd)

edy in its rate case against the Georgia Power Company. *Federated Dep't Stores, Inc. v. Ga. PSC*, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

Adoption agency's choice of adoptive parents by child's foster parents is not a "contested case" within the meaning of this section, as the choice is entirely discretionary in nature. *Drummond v. Fulton County Dep't of Family & Children Servs.*, 237 Ga. 449, 228 S.E.2d 839 (1976), cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977).

Benefits

Rules relating to loans, grants, and benefits are excluded from certain sections of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) by Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

Unemployment benefits. — Under the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, the adoption of rules relating to benefits by the state or of an

agency is expressly exempted by O.C.G.A. § 50-13-2(6)(I) from the strict rule-making procedural requirements of O.C.G.A. § 50-13-4. This includes the promulgation of policies determining eligibility for entitlement and rules for granting unemployment benefits. *Caldwell v. Amoco Fabrics Co.*, 165 Ga. App. 674, 302 S.E.2d 596 (1983).

Indemnities. — The making of a payment pursuant to O.C.G.A. § 4-4-72 (indemnification of owners of livestock destroyed in eradication of diseases) must be classified as a "benefit" — and the rule therefore is within the exception made by O.C.G.A. § 50-13-2, and as to which no permission to sue the state is given under the provisions of O.C.G.A. Ch. 13, T. 50. *Irvin v. Woodliff*, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

An order by the Commissioner of Agriculture as to payment for destroyed herds of swine pursuant to O.C.G.A. § 4-4-72 is a benefit under O.C.G.A. § 50-13-2. *Irvin v. Woodliff*, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

While every benefit is not indemnity, necessarily, every indemnity is benefit. *Irvin v. Woodliff*, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

OPINIONS OF THE ATTORNEY GENERAL**ANALYSIS****GENERAL CONSIDERATION****AGENCY**

1. INCLUDED
2. EXCLUDED

RULES

1. IN GENERAL
2. EXCLUDED

General Consideration

Purpose and intent of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), is not to create additional substantive requirements in what is cause for revocation of a license by an administrative agency; rather, the purpose and intent of the Act is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the Act applies. 1965-66 Op. Att'y Gen. No. 65-73.

Licensee momentarily complying but with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of a license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in non-compliance with all lawful requirements for the retention of the license at the time that

the licensee is alleged to have been in non-compliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

Decision not to "grant" a teaching certificate by officials in the certification division of the Department of Education based upon the failure of an applicant to meet certain required criteria is not a "contested case" within the meaning of O.C.G.A. § 50-13-2(2). 1991 Op. Att'y Gen. No. 91-10.

Agency

1. Included

Department of Mines, Mining, and Geology (now Department of Natural Resources) is subject to the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1963-65 Op. Att'y Gen. p. 784.

Superior Court Clerks' Retirement Fund is within definition of "agency". 1963-65 Op. Att'y Gen. p. 661.

Proceedings of Public Service Commission. — The Public Service Commission, being bound by the commission's own regulations, is required by law to afford a hearing on an application for the approval of a loan; such a proceeding is accurately characterized as one in which "the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing," and is, therefore, a contested case within the meaning of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1975 Op. Att'y Gen. No. 75-139.

2. Excluded

Board of Pardons and Paroles. — Board of Pardons and Paroles is not "agency" within the meaning of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), and therefore is not subject to the hearing requirements of Ga. L. 1965, p. 283, § 13 (see O.C.G.A. § 50-13-13). 1978 Op. Att'y Gen. No. 78-44.

Georgia Firemen's Pension Fund. — Georgia Firemen's Pension Fund is not state agency or board within purview of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50); neither is the Peace Officers Annuity and Benefit Fund. 1974 Op. Att'y Gen. No. U74-72.

Georgia Forest Research Council. — Georgia Forest Research Council and its policies fall within exclusions itemized by this section in that they specifically deal with internal operational activities and contracts with other state agencies for the purpose of forestry research as an agency of the state government, and therefore do not come under the provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50).

Commissioner of Agriculture. — The Commissioner of Agriculture has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing a decision to bar a person from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

Rules

1. In General

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283 §§ 2-4 (see O.C.G.A. § 50-13-2) must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283 §§ 6, 7 and 8, and Ga. L. 1964, p. 338 § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

2. Excluded

Rules and regulations of Superior Court Clerk's Retirement Fund do not come under provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50), because of the specific exclusion relating to rules dealing with retirement. 1963-65 Op. Att'y Gen. p. 661.

Certain rules of Department of Human Resources. — Rules and regulations promulgated by the Department of Human Resources in connection with its operation and administration of public assistance programs are expressly excluded from the general filing requirements of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1965-66 Op. Att'y Gen. No. 65-8.

Rules or regulations of University System. — Any rules or regulations adopted by any

Rules (Cont'd)**2. Excluded (Cont'd)**

school, college, or hospital, or other educational institution within the University System of Georgia would not be subject to the provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1963-65 Op. Att'y Gen. p. 622.

Rules adopted by Board of Regents. —

Any rules, regulations, or statements of policy adopted by the Board of Regents of the University System of Georgia pursuant to its duties, responsibilities, and functions as defined by the Constitution and by statute, and in the exercise of powers granted to it would relate to the regulation of a school, a college, or a hospital, or other educational, eleemosynary, or charitable institution, and would, thereby, be excepted from the definition of "agency," or would fall within the exclusions of the definitions of "rule" listed in this section. 1963-65 Op. Att'y Gen. p. 622.

Rules by Department of Audits and Ac-

counts. — The rules and regulations, procedures, forms, and standards that are issued or prescribed by the Department of Audits and Accounts or the state auditor fall within the exclusions itemized in this section in dealing with the internal fiscal activities of the various state agencies of the state government, and do not come under the provisions of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1963-65 Op. Att'y Gen. p. 637.

Rules of Office of Planning and Budget.

— The rules and regulations, procedures, and standards that are issued or prescribed by the Office of Planning and Budget affect only the internal management of the office and the various agencies of state government, and fall within the exclusion of the definition of "rule"; for these reasons, the office is not subject to the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). 1963-65 Op. Att'y Gen. p. 631.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 31.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 1 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 1-102.

ALR. — Propriety of hospital's conditioning physician's staff privileges on his carrying professional liability or malpractice insurance, 7 ALR4th 1238.

50-13-3. Adoption of rules of organization and practice; public inspection and validity of rules, policies, orders, decisions, and opinions.

(a) In addition to other rule-making requirements imposed by law, each agency shall:

(1) Adopt as a rule a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt rules of practice setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all rules and all other written statements of policy or interpretations formulated, adopted, or used by the agency in the discharge of its functions; and

(4) Make available for public inspection all final orders, decisions, and opinions except those expressly made confidential or privileged by statute.

(b) No agency rule, order, or decision shall be valid or effective against any person or party nor may it be invoked by the agency for any purpose until it has been published or made available for public inspection as required in this Code section. This provision is not applicable in favor of any person or party who has actual knowledge thereof. (Ga. L. 1964, p. 338, § 3; Ga. L. 1965, p. 283, § 5.)

JUDICIAL DECISIONS

WIC vendor handbook. — Although Women, Infants, and Children Program vendor handbook was subject to the publication and inspection requirements of O.C.G.A. § 50-13-3(a), as defendants all had actual knowledge of the rules and regulations in question, these rules and regulations were valid and effective against the defendants, despite the lack of required publication by the Department of Human Resources. So v. Ledbetter, 209 Ga. App. 666, 434 S.E.2d 517 (1993).

Georgia Bureau of Investigation's rules. — Forensic Sciences Division of the Georgia Bureau of Investigation is exempt under O.C.G.A. § 35-3-155 from the requirement of O.C.G.A. § 50-13-3(b) that it publish its rules for granting permits for the adminis-

tration of breath, blood, and urine tests. State v. Bowen, 274 Ga. 1, 547 S.E.2d 286 (2001).

Forensic testing procedures. — Standard Operating Procedures for urinalysis testing of the Division of Forensic Sciences of the Georgia Bureau of Investigation satisfied the requirements regarding adoption and publication of rules under O.C.G.A. § 50-13-3. State v. Cooper, 229 Ga. App. 97, 493 S.E.2d 1 (1997).

Cited in Cullers v. Home Credit Co., 130 Ga. App. 441, 203 S.E.2d 544 (1973); Georgia State Bd. of Dental Exmrs. v. Daniels, 137 Ga. App. 706, 224 S.E.2d 820 (1976); Mowery v. State, 234 Ga. App. 801, 507 S.E.2d 821 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 193.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 161 et seq., 192, 196, 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

ALR. — What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memorandums, exempt from disclosure or inspection under state freedom of information acts, 26 ALR4th 639.

50-13-4. Procedural requirements for adoption, amendment, or repeal of rules; emergency rules; limitation on action to contest rule; legislative override.

(a) Prior to the adoption, amendment, or repeal of any rule, other than interpretive rules or general statements of policy, the agency shall:

(1) Give at least 30 days' notice of its intended action. The notice shall include an exact copy of the proposed rule and a synopsis of the proposed rule. The synopsis shall be distributed with and in the same

manner as the proposed rule. The synopsis shall contain a statement of the purpose and the main features of the proposed rule, and, in the case of a proposed amendatory rule, the synopsis also shall indicate the differences between the existing rule and the proposed rule. The notice shall also include the exact date on which the agency shall consider the adoption of the rule and shall include the time and place in order that interested persons may present their views thereon. The notice shall also contain a citation of the authority pursuant to which the rule is proposed for adoption and, if the proposal is an amendment or repeal of an existing rule, the rule shall be clearly identified. The notice shall be mailed to all persons who have requested in writing that they be placed upon a mailing list which shall be maintained by the agency for advance notice of its rule-making proceedings and who have tendered the actual cost of such mailing as from time to time estimated by the agency;

(2) Afford to all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. In the case of substantive rules, opportunity for oral hearing must be granted if requested by 25 persons who will be directly affected by the proposed rule, by a governmental subdivision, or by an association having not less than 25 members. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if requested to do so by an interested person either prior to adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption;

(3) In the formulation and adoption of any rule which will have an economic impact on businesses in the state, reduce the economic impact of the rule on small businesses which are independently owned and operated, are not dominant in their field, and employ 100 employees or less by implementing one or more of the following actions when it is legal and feasible in meeting the stated objectives of the statutes which are the basis of the proposed rule:

(A) Establish differing compliance or reporting requirements or timetables for small businesses;

(B) Clarify, consolidate, or simplify the compliance and reporting requirements under the rule for small businesses;

(C) Establish performance rather than design standards for small businesses; or

(D) Exempt small businesses from any or all requirements of the rules; and

(4) In the formulation and adoption of any rule, an agency shall choose an alternative that does not impose excessive regulatory costs on

any regulated person or entity which costs could be reduced by a less expensive alternative that fully accomplishes the stated objectives of the statutes which are the basis of the proposed rule.

(b) If any agency finds that an imminent peril to the public health, safety, or welfare, including but not limited to, summary processes such as quarantines, contrabands, seizures, and the like authorized by law without notice, requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable to adopt an emergency rule. Any such rule adopted relative to a public health emergency shall be submitted as promptly as reasonably practicable to the House of Representatives and Senate Committees on Judiciary. The rule may be effective for a period of not longer than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of this Code section is not precluded; provided, however, that such a rule adopted pursuant to discharge of responsibility under an executive order declaring a state of emergency or disaster exists as a result of a public health emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a period of not more than 120 days thereafter.

(c) It is the intent of this Code section to establish basic minimum procedural requirements for the adoption, amendment, or repeal of administrative rules. Except for emergency rules which are provided for in subsection (b) of this Code section, the provisions of this Code section are applicable to the exercise of any rule-making authority conferred by any statute, but nothing in this Code section repeals or diminishes additional requirements imposed by law or diminishes or repeals any summary power granted by law to the state or any agency thereof.

(d) No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance with subsections (a) and (e) of this Code section and in substantial compliance with the remainder of this Code section. A proceeding to contest any rule on the ground of noncompliance with the procedural requirements of this Code section must be commenced within two years from the effective date of the rule.

(e) The agency shall transmit the notice provided for in paragraph (1) of subsection (a) of this Code section to the legislative counsel. The notice shall be transmitted at least 30 days prior to the date of the agency's intended action. Within three days after receipt of the notice, if possible, the legislative counsel shall furnish the presiding officers of each house with a copy of the notice, and the presiding officers shall assign the notice to the chairperson of the appropriate standing committee in each house for review and any member thereof who makes a standing written request. In the event a presiding officer is unavailable for the purpose of making the assignment within the time limitations, the legislative counsel shall assign

the notice to the chairperson of the appropriate standing committee. The legislative counsel shall also transmit within the time limitations provided in this subsection a notice of the assignment to the chairperson of the appropriate standing committee. Each standing committee of the Senate and the House of Representatives is granted all the rights provided for interested persons and governmental subdivisions in paragraph (2) of subsection (a) of this Code section.

(f)(1) In the event a standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption and the agency adopts the proposed rule over the objection, the rule may be considered by the branch of the General Assembly whose committee objected to its adoption by the introduction of a resolution for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General Assembly. It shall be the duty of any agency which adopts a proposed rule over such objection so to notify the presiding officers of the Senate and the House of Representatives, the chairpersons of the Senate and House committees to which the rule was referred, and the legislative counsel within ten days after the adoption of the rule. In the event the resolution is adopted by such branch of the General Assembly, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval.

(2) In the event each standing committee to which a notice is assigned as provided in subsection (e) of this Code section files an objection to a proposed rule prior to its adoption by a two-thirds' vote of the members of the committee who were voting members on the tenth day of the current session, after having given public notice of the time, place, and purpose of such vote at least 48 hours in advance, as well as the opportunity for members of the public including the promulgating agency, to have a reasonable time to comment on the proposed committee action at the hearing, the effectiveness of such rule shall be stayed until the next legislative session at which time the rule may be considered by the General Assembly by the introduction of a resolution in either branch of the General Assembly for the purpose of overriding the rule at any time within the first 30 days of the next regular session of the General

Assembly. In the event the resolution is adopted by the branch of the General Assembly in which it was introduced, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the rule shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of his or her veto, the rule shall remain in effect. In the event of his or her approval, the rule shall be void on the day after the date of his or her approval. If after the thirtieth legislative day of the legislative session of which the challenged rule was to be considered the General Assembly has not considered an override of the challenged rule pursuant to this subsection, the rule shall then immediately take effect.

(g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection Division of the Department of Natural Resources as to any rule for which, as part of the notice required by paragraph (1) of subsection (a) of this Code section, the director of the division certifies that such rule is required for compliance with federal statutes or regulations or to exercise certain powers delegated by the federal government to the state to implement federal statutes or regulations, but paragraph (2) of this subsection shall apply to the Environmental Protection Division of the Department of Natural Resources as to any rule so certified. As part of such certification, the director shall cite the specific section or sections of federal statutes or regulations which the proposed rule is intended to comply with or implement. General references to the name or title of a federal statute or regulation shall not suffice for the purposes of this paragraph. Any proposed rule or rules that are subject to this paragraph shall be noticed separately from any proposed rule or rules that are not subject to this paragraph.

(2) In the event the chairperson of any standing committee to which a proposed rule certified by the director of the division pursuant to paragraph (1) of this subsection is assigned notifies the director that the committee objects to the adoption of the rule or has questions concerning the purpose, nature, or necessity of such rule, it shall be the duty of the director to consult with the committee prior to the adoption of the rule.

(h) The provisions of subsections (e) and (f) of this Code section shall apply to any rule of the Department of Community Health that is promulgated pursuant to Code Section 31-2-12 or 31-45-10, except that the

presiding officer of the Senate is directed to assign the notice of such a rule to the chairperson of the Senate Science and Technology Committee and the presiding officer of the House of Representatives is directed to assign the notice of such a rule to the chairperson of the House Committee on Industrial Relations. As used in this subsection, the term “rule” shall have the same meaning as provided in paragraph (6) of Code Section 50-13-2 and shall include interpretive rules and general statements of policy, notwithstanding any provision of subsection (a) of this Code section to the contrary.

(i) This Code section shall not apply to any comprehensive state-wide water management plan or revision thereof prepared by the Environmental Protection Division of the Department of Natural Resources and proposed, adopted, amended, or repealed pursuant to Article 8 of Chapter 5 of Title 12; provided, however, that this Code section shall apply to any rules or regulations implementing such a plan. (Ga. L. 1964, p. 338, § 4; Ga. L. 1965, p. 283, § 6; Ga. L. 1977, p. 1520, §§ 1-4; Ga. L. 1978, p. 1437, §§ 1-5; Ga. L. 1982, p. 3, § 50; Ga. L. 1984, p. 1219, § 1; Ga. L. 1990, p. 1274, § 1; Ga. L. 1993, p. 1817, § 2; Ga. L. 1994, p. 97, § 50; Ga. L. 1994, p. 503, § 1; Ga. L. 1997, p. 1521, § 1; Ga. L. 2000, p. 549, § 4; Ga. L. 2000, p. 1619, § 2; Ga. L. 2002, p. 1386, § 16; Ga. L. 2004, p. 711, § 3; Ga. L. 2008, p. 7, § 1/SB 352; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 303, §§ 4, 15/HB 117; Ga. L. 2009, p. 453, §§ 1-4, 1-10/HB 228.)

The 2008 amendment, effective March 29, 2008, designated the prior existing provisions of subsection (f) as paragraph (f)(1); in paragraph (f)(1), inserted “or her” in the last three sentences; added paragraph (f)(2); in paragraph (g)(1), in the first sentence, inserted the language beginning “as to any rule” and ending with “federal statutes or regulations” in the middle, and added “as to any rule so certified” at the end, and added the last three sentences; in paragraph (g)(2), substituted “chairperson” for “chairman” near the beginning, substituted “certified by the director of the division pursuant to paragraph (1) of this subsection” for “relative to the Environmental Protection Division of the Department of Natural Resources” near the middle, substituted “director” for “agency” twice, and substituted “such rule” for “the rule” near the end; and, in subsection (i), added the proviso at the end.

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, in paragraph (f)(1), substituted “chairpersons” for “chairmen”; and in sub-

section (h), substituted “the Senate Science and Technology Committee” for “the Senate Defense, Science and Technology Committee” and substituted “the House Committee on Industrial Relations.” for “the House Committee on Industry.” The second 2009 amendment, effective April 30, 2009, substituted “Senate Science and Technology Committee” for “Senate Defense, Science and Technology Committee” and substituted “House Energy, Utilities and Telecommunications Committee” for “House Committee on Industry” in the first sentence of subsection (h). See the Editor’s note for intent. The third 2009 amendment, effective July 1, 2009, in the first sentence of subsection (h), substituted “Department of Community Health” for “Department of Human Resources” and substituted “Code Section 31-2-12” for “Code Section 31-2-7”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “31-45-10” was substituted for “31-43-10” in the first sentence in subsection (h).

Pursuant to Code Section 28-9-5, in 2002, “of” was substituted for “or” in the third sentence of subsection (b).

The amendment of this Code section by Ga. L. 2009, p. 303, §§ 4 and 15, was not given effect, based on the language of Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, which provides in part: "In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

Editor's notes. — Ga. L. 2004, p. 711, § 1, not codified by the General Assembly, provides that: "The General Assembly finds and declares that:

"(1) A comprehensive state-wide water management plan for this state is needed and should be developed by the Environmental Protection Division of the Department of Natural Resources;

"(2) Such plan should support a structured, yet flexible, approach to regional water planning and provide guidance and incentives for regional and local water planning efforts; and

"(3) Regional water planning efforts of the Environmental Protection Division should be coordinated with and not supplant the existing efforts of all state agencies."

Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act." Thus, the amendments by Ga. L. 2009, p. 303, §§ 4 and 15 were not given effect due to the conflicting amendment by Ga. L. 2009, p. 8, § 50.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 301 (1997). For article on the 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 1 (2004). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 1 (2002).

JUDICIAL DECISIONS

O.C.G.A. § 50-13-4 mandates full consideration of all written and oral submissions.

Outdoor Adv. Ass'n v. DOT, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Failure to comply with O.C.G.A. § 50-13-4(a)(1) invalidates an amended rule. *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Economic impact on businesses. — The mere fact that most of the affected businesses have less than 100 employees is not a sufficient reason to conclude that compliance with O.C.G.A. § 50-13-4(a)(3) is not necessary. *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827, cert. denied, 186 Ga. App. 918, 367 S.E.2d 827 (1988).

Exemptions from procedural requirements. — Under the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, the adoption of rules relating to benefits by the state or of an agency is expressly exempted by O.C.G.A. § 50-13-2(6)(I) from the strict

rule-making procedural requirements of O.C.G.A. § 50-13-4. This includes the promulgation of policies determining eligibility for entitlement and rules for granting unemployment benefits. *Caldwell v. Amoco Fabrics Co.*, 165 Ga. App. 674, 302 S.E.2d 596 (1983).

Strict compliance with respect to the citation requirement is necessary only when a rule is being adopted, not when it is amended or repealed. *Corner v. State*, 223 Ga. App. 353, 477 S.E.2d 593 (1996).

Cited in *Cullers v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Georgia State Bd. of Dental Exmrs. v. Daniels*, 137 Ga. App. 706, 224 S.E.2d 820 (1976); *State v. Strickman*, 173 Ga. App. 1, 325 S.E.2d 775 (1984); *Brown v. State Bd. of Exmrs. of Psychologists*, 190 Ga. App. 311, 378 S.E.2d 718 (1989); *Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys.*, 262 Ga. App. 879, 586 S.E.2d 762 (2003); *Charles H. Wesley Educ. Found., Inc. v. State Election Bd.*, 282 Ga. 707, 654 S.E.2d 127 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8, and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

Agency pronouncements should be promulgated in accordance with O.C.G.A. Ch. 13, T. 50. — Those pronouncements by which an agency seeks to interpret the agency's rules and regulations by formulating explicit and detailed standards which have substantial impact should be promulgated in accordance with the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et

seq. (see O.C.G.A. Ch. 13, T. 50). 1976 Op. Att'y Gen. No. 76-78.

Effective date of emergency rules adopted by agency. — Emergency rules adopted by state agencies may be made effective by the agency on the date of adoption, if the agency so desires; all emergency rules should be accompanied by a statement from the agency indicating their effective date. 1975 Op. Att'y Gen. No. 75-123.

Regulations as stringent as federal regulations authorized. — O.C.G.A. § 50-13-4(a)(4) does not prohibit the Board of Natural Resources and director of the Environmental Protection Division from adopting regulations and taking such actions as are necessary to ensure that the state's regulatory authority is at least as stringent as federal regulatory authority established pursuant to federal environmental laws. 1997 Op. Att'y Gen. No. 97-25.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 190 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 161 et seq., 208, 209. 73A C.J.S., Public Administrative Law and Procedure, § 313 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

ALR. — Retroactive operation of regulation of administrative authority amending a previous regulation, 153 ALR 1188.

50-13-5. Filing of previously adopted rules.

(a) Within 20 days after July 1, 1965, each agency shall file with the Secretary of State a certified copy of all rules which were adopted by the agency prior to July 1, 1965, and which are still of full force and effect and a certified copy of all rules which were adopted by the agency prior to July 1, 1965, and which do not become effective until after July 1, 1965.

(b) The copy of each rule shall contain a citation of the authority pursuant to which the rule was adopted.

(c) The Secretary of State shall endorse on each copy the time and date of filing and shall maintain a record of the rules for public inspection.

(d) Any rule made by an agency prior to July 1, 1965, shall be void and of no effect unless filed in accordance with subsections (a) through (c) of this Code section. (Ga. L. 1964, p. 338, § 5; Ga. L. 1965, p. 283, § 7; Ga. L. 2000, p. 1619, § 3.)

JUDICIAL DECISIONS

General Assembly intended by language that rules be filed not later than 20 days after the effective date of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50). *Wall v. Youmans*, 223 Ga. 191, 154 S.E.2d 191 (1967).

Time beyond which performance may not be made. — The words “within 20 days after”, as used in this section, do not prescribe both the beginning and the ending of the time during which performance may be

rendered, but merely establish the time beyond which performance may not be made. *Wall v. Youmans*, 223 Ga. 191, 154 S.E.2d 191 (1967).

Early filing permissible. — Filing the rules with the Secretary of State one day ahead of the effective date of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) did not in any way thwart the intention and purpose of that law. *Wall v. Youmans*, 223 Ga. 191, 154 S.E.2d 191 (1967).

OPINIONS OF THE ATTORNEY GENERAL

Agencies determine which policies and regulations must be kept on file. — Under this section, it is the responsibility and decision of any particular agency to say which, if any, of the agency's policies and regulations must be kept on file with the Secretary of State; the responsibility belongs to the agency which promulgates the rule. 1971 Op. Att'y Gen. No. 71-58.

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a “rule,” as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att'y Gen. No. 71-158.

Citations of authority and filing endorsements. — The purpose of requiring copies of rules to be accompanied by a citation of authority is to inform interested parties as to

the statutory authority relied upon by the rule making agency; the purpose of requiring a filing endorsement on each copy is to fix the date upon which the rule becomes effective; both of these purposes are accomplished by placing a single citation of authority and a single filing endorsement upon a regulatory compilation adopted by an agency under the same statutory authority and filed simultaneously. 1963-65 Op. Att'y Gen. p. 786.

It is permissible for a single citation of authority and a single filing endorsement to be used for a group of paragraphs which is adopted under the same statutory authorization and filed simultaneously. 1963-65 Op. Att'y Gen. p. 786.

Effective date of emergency rules. — Emergency rules adopted by state agencies may be made effective by the agency on the date of adoption, if the agency so desires; all emergency rules should be accompanied by a statement from the agency indicating their effective date. 1975 Op. Att'y Gen. No. 75-123.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d., Administrative Law, § 205.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-6. Rules not effective until 20 days after filed with Secretary of State; maintenance of record of the rules; exceptions; rules governing manner and form of filing.

(a) Each rule adopted after July 1, 1965, shall not become effective until the expiration of 20 days after the rule is filed in the office of the Secretary of State. Each rule so filed shall contain a citation of the authority pursuant to which it was adopted and, if an amendment, shall clearly identify the original rule.

(b) The Secretary of State shall endorse on each rule thus filed the time and date of filing and shall maintain a record of the rules for public inspection.

(c) The 20 day filing period is subject to the following exceptions:

(1) Where a statute or the terms of the rule require a date which is later than the 20 day period, then the later date is the effective date; and

(2) Any emergency rule adopted pursuant to subsection (b) of Code Section 50-13-4 may become effective immediately upon adoption or within a period of less than 20 days. The emergency rule, with a copy of the finding as required by subsection (b) of Code Section 50-13-4, shall be filed with the office of the Secretary of State within four working days after its adoption.

(d) The Secretary of State shall prescribe rules governing the manner and form in which regulations shall be prepared for filing. The Secretary may refuse to accept for filing any rule that does not conform to such requirements. (Ga. L. 1964, p. 338, § 6; Ga. L. 1979, p. 1014, § 2; Ga. L. 1982, p. 3, § 50; Ga. L. 2000, p. 1619, § 4.)

JUDICIAL DECISIONS

Unfiled and unpublished policy manual not entitled to judicial notice. — A policy manual upon which a state agency relies, if never filed with or published by the Secretary of State pursuant to O.C.G.A. §§ 50-13-6 and 50-13-7, is not entitled to judicial notice, even if the manual's publication is not statutorily required. *Commissioner, Dep't of Human Resources v. Haggard*, 173 Ga. App. 676, 327 S.E.2d 798 (1985).

Appellate court, on remand from the Supreme Court of Georgia, was unable to take judicial notice of the Public Service Commission's transportation rules as those rules had not been filed with the Secretary of State, so

the rules had not become effective under the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., and were not part of the record; since the state was unable to alert the appellate court to any rule or regulation which served as a constitutionally adequate substitute for a warrant, the original decision, that a warrantless search of defendant's commercial truck was improper, stood. *Ponce v. State*, 279 Ga. App. 207, 630 S.E.2d 840 (2006).

Cited in *Cullers v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a “rule,” as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7 and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. Op. Att’y Gen. No. 71-158.

Decision not to file and withdrawal of

rules. — While the language of the Georgia Administrative Procedure Act, Ga. L. 1968, p. 338 § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) is geared to the initial filing of a rule, there is no difference in principle between an initial decision not to file and a subsequent decision to withdraw that which has already been filed; in the context of the purposes for which that chapter was adopted, its requirements and its penalties, both situations would seem to be the same. 1971 Op. Att’y Gen. No. 71-58.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 205.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-7. Secretary of State to publish compilation of rules and quarterly bulletin.

(a) The Secretary of State shall compile, index, and publish in print or electronically all rules adopted by each agency and remaining in effect. Compilations shall be supplemented or revised as often as necessary and at least once every two years.

(b) The Secretary of State shall publish in print or electronically a quarterly bulletin in which the Secretary of State shall set forth the text of all rules filed during the preceding quarter.

(c) The Secretary of State, in his or her discretion, may omit rules from the bulletin or compilation if their publication would be unduly cumbersome, expensive, or otherwise inexpedient, provided that the omitted rules are made available in electronic, printed, or processed form on application to the adopting agency and that the bulletin or compilation contains a notice stating the general subject matter of the rules so omitted and stating how copies thereof may be obtained.

(d) The official compilation, Rules and Regulations of the State of Georgia, and bulletins shall be made available upon request free of charge to the heads of all departments, bureaus, agencies, commissions, and boards of this state; members of the General Assembly; Justices of the Supreme Court, Judges of the Court of Appeals; judges, clerks, and district attorneys of the superior courts. The compilation and bulletins shall be made available upon request to other persons at a price fixed by the Secretary of State to cover publication and mailing costs.

(e) The Secretary of State may engage the services of a privately operated editorial and publication firm experienced in the publication of annotated law books to compile, index, and publish such rules. The compilation shall conform in its arrangement as near as practicable to the Code of this state. (Ga. L. 1964, p. 338, § 7; Ga. L. 1965, p. 283, § 8; Ga. L. 1967, p. 893, § 1; Ga. L. 1968, p. 115, § 1; Ga. L. 2000, p. 1619, § 5.)

JUDICIAL DECISIONS

Unfiled and unpublished policy manual not entitled to judicial notice. — A policy manual upon which a state agency relies, if never filed with or published by the Secretary of State pursuant to O.C.G.A. §§ 50-13-6 and 50-13-7, is not entitled to judicial notice,

even if the manual's publication is not statutorily required. *Commissioner, Dep't of Human Resources v. Haggard*, 173 Ga. App. 676, 327 S.E.2d 798 (1985).

Cited in *State v. Bonini*, 236 Ga. 896, 225 S.E.2d 907 (1976).

OPINIONS OF THE ATTORNEY GENERAL

Rules must be properly adopted to be valid. — Any rule, regulation, resolution, etc., by whatever name called, which falls under the definition of a "rule," as defined by Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2), must be adopted pursuant to the

procedure for adoption of rules, i.e., Ga. L. 1965, p. 283, §§ 6, 7, and 8 and Ga. L. 1964, p. 338, § 6 (see O.C.G.A. §§ 50-13-4 through 50-13-7), if it is to be valid against any person or party. 1971 Op. Att'y Gen. No. 71-158.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 193.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 185, 204.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 2-101.

50-13-8. Judicial notice of rules.

The courts shall take judicial notice of any rule which has become effective pursuant to this chapter. (Ga. L. 1964, p. 338, § 8.)

Law reviews. — For annual survey of evidence law, see 58 Mercer L. Rev. 151 (2006).

JUDICIAL DECISIONS

Limits on judicial notice. — In the absence of a specific designation of a drug, the courts cannot "notice" whether a certain substance falls within the prohibitive scope of a broad category of drugs. *Martin v. State*, 135 Ga. App. 4, 217 S.E.2d 312 (1975).

Court cannot take judicial notice of regulation not part of the record. *Allen v. State*

Personnel Bd., 140 Ga. App. 747, 231 S.E.2d 826 (1976).

Only when rules or regulations are adopted pursuant to O.C.G.A. Ch. 13, T. 50 can the rules or regulations be judicially noticed. *Dix v. State*, 156 Ga. App. 868, 275 S.E.2d 807 (1981).

Ultimate responsibility for statutory con-

struction. — Although weight will be given to administrative interpretation in case of doubtful statutes, the ultimate responsibility for statutory construction rests with the courts. *Bradford v. Davidson*, 150 Ga. App. 625, 258 S.E.2d 235 (1979), rev'd on other grounds, 245 Ga. 8, 262 S.E.2d 780 (1980).

Administrative rulings are adopted only after court has made independent determination that the rulings correctly reflect the meaning of the statute. *Bradford v. Davidson*, 150 Ga. App. 625, 258 S.E.2d 235 (1979), rev'd on other grounds, 245 Ga. 8, 262 S.E.2d 780 (1980).

Methods for blood alcohol breath tests. — Under O.C.G.A. § 50-13-8, the courts take judicial notice of any rule which has become effective pursuant to the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and Ga. Comp. R. & Regs. Rule 92-3-.06 embodies methods for blood alcohol breath tests approved by the Division of Forensic Sciences of the Georgia Bureau of Investigation; a trial court erred in suppressing the results of a blood alcohol content breath test where the test was conducted in accordance with methods adopted by the Division of Forensic Sciences. *State v. Palmaka*, 266 Ga. App. 595, 597 S.E.2d 630 (2004).

Required judicial notice. — Neither the Department of Motor Vehicle Safety (DMVS) nor the Public Service Commission (PSC) fall within the group of government entities explicitly excluded by O.C.G.A. § 50-13-2(1) from the Administrative Procedure Act's (APA) provisions; thus, the rules and the regulations promulgated pursuant to the APA by DMVS or the PSC and thereafter properly adopted by DMVS are required to be judicially noticed by the courts. *State v. Ponce*, 279 Ga. 651, 619 S.E.2d 682 (2005).

To the extent that language in *Lemon v. Martin*, 232 Ga. App. 579 (1998), or cases such as *Joel Properties v. Reed*, 203 Ga. App.

257 (1992), can be read as authority for the proposition that the courts cannot take judicial notice of the rules and the regulations of those state agencies that promulgate rules and regulations pursuant to the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., that language is disapproved by the Supreme Court of Georgia. *State v. Ponce*, 279 Ga. 651, 619 S.E.2d 682 (2005).

Judicial notice of public transportation commission's transportation rules was unavailable. — Appellate court, on remand from the Supreme Court of Georgia, was unable to take judicial notice of the Public Service Commission's transportation rules, as those rules had not been filed with the Secretary of State, so the rules had not become effective under the Georgia Administrative Procedure Act (APA), O.C.G.A. § 50-13-1 et seq., and were not part of the record; since the state was unable to alert the appellate court to any rule or regulation which served as a constitutionally adequate substitute for a warrant, the original decision, that a warrantless search of the defendant's commercial truck was improper, stood. *Ponce v. State*, 279 Ga. App. 207, 630 S.E.2d 840 (2006).

Cited in *Weil Bros. Cotton v. Harrold Bros.*, 118 Ga. App. 8, 162 S.E.2d 309 (1968); *Employers Com. Union Cos. v. Waldrop*, 124 Ga. App. 746, 186 S.E.2d 134 (1971); *Cullers v. Home Credit Co.*, 130 Ga. App. 441, 203 S.E.2d 544 (1973); *Tischmak v. State*, 133 Ga. App. 534, 211 S.E.2d 587 (1974); *Wielgorecki v. White*, 133 Ga. App. 834, 212 S.E.2d 480 (1975); *Department of Human Resources v. Sims*, 137 Ga. App. 72, 222 S.E.2d 832 (1975); *Blossman Gas Co. v. Williams*, 189 Ga. App. 195, 375 S.E.2d 117 (1988); *Owens v. Georgia Underwriting Ass'n*, 223 Ga. App. 29, 476 S.E.2d 810 (1996); *Enchanted Valley RV Resort, Ltd. v. Weese*, 241 Ga. App. 415, 526 S.E.2d 124 (1999); *Scara v. State*, 259 Ga. App. 510, 577 S.E.2d 796 (2003).

RESEARCH REFERENCES

ALR. — Judicial notice of banking customs or other matters relating to banks or

trust companies, 89 ALR 1336; 94 ALR 1352; 96 ALR 853; 97 ALR 1123; 104 ALR 375.

50-13-9. Petition for promulgation, amendment, or repeal of rule; agency response.

An interested person may petition an agency requesting the promulgation, amendment, or repeal of a rule. Each agency shall prescribe by rule the form for petitions and the procedure for their submission, consideration, and disposition. Within 30 days after submission of a petition, the agency either shall deny the petition in writing, stating its reasons for the denial, or shall initiate rule-making proceedings in accordance with Code Section 50-13-4. (Ga. L. 1964, p. 338, § 9.)

Law reviews. — For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008).

JUDICIAL DECISIONS

Service of notice of appeal. — In an appeal of the Georgia Public Service Commission's decision imposing a fine for severing a telephone cable, the trial court did not err when the court denied the Commission's motion to dismiss the appeal because notice of it was not personally served on the Commission as the Georgia Administrative Proce-

dure Act, O.C.G.A. § 50-13-1 et seq., did not specify how service of the notice was to be perfected on the Commission, and there was no express statutory requirement for personal service. *Douglas Asphalt Co. v. Ga. PSC*, 263 Ga. App. 711, 589 S.E.2d 292 (2003).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 190 et seq., 214, 217.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 182 et seq. 73A C.J.S.,

Public Administrative Law and Procedure, § 297 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A.

50-13-9.1. Variances or waivers to rules.

(a) The General Assembly finds and declares that the strict application of rules can lead to unreasonable, uneconomical, and unintended results in particular instances. The General Assembly further declares that it is appropriate in such cases to adopt a procedure for agencies to provide relief to persons subject to regulation.

(b) As used in this Code section, the term:

(1) "Substantial hardship" means a significant, unique, and demonstrable economic, technological, legal, or other type of hardship to the person requesting a variance or waiver which impairs the ability of the person to continue to function in the regulated practice or business.

(2) "Variance" means a decision by an agency to grant a modification to all or part of the literal requirements of a rule to a person who is subject to the rule.

(3) “Waiver” means a decision by an agency not to apply all or part of a rule to a person who is subject to the rule.

(c) Except as provided in subsection (h) of this Code section, an agency is authorized to grant a variance or waiver to a rule when a person subject to that rule demonstrates that the purpose of the underlying statute upon which the rule is based can be or has been achieved by other specific means which are agreeable to the person seeking the variance or waiver and that strict application of the rule would create a substantial hardship to such person. A register of all pending requests for variances and waivers and all approved variances and waivers shall be maintained by the department granting the waiver or variance and shall be updated upon each grant of waiver or variance and be made available, upon request, to members of the public. The register and each entry on the register shall be posted on the GeorgiaNet. Any member of the public, including interested parties, shall have the opportunity to submit written comments concerning proposed variances or waivers prior to the approval of a variance or waiver pursuant to this Code section.

(d) Except as provided in subsection (h) of this Code section, a person who is subject to regulation by an agency rule may file a petition with that agency requesting a variance or waiver from the agency’s rule. In addition to any other requirements which may be imposed by the agency, each petition shall specify:

(1) The rule from which a variance or waiver is requested;

(2) The type of action requested;

(3) The specific facts of substantial hardship which would justify a variance or waiver for the petitioner, including the alternative standards which the person seeking the variance or waiver agrees to meet and a showing that such alternative standards will afford adequate protection for the public health, safety, and welfare; and

(4) The reason why the variance or waiver requested would serve the purpose of the underlying statute.

(e) The agency subject to the provisions of subsections (c) and (d) of this Code section shall grant or deny a petition for variance or waiver in writing no earlier than 15 days after the posting of the petition on the register and no more than 60 days after the receipt of the petition. The agency’s decision to grant or deny the petition shall be in writing and shall contain a statement of the relevant facts and the reasons supporting the agency’s action.

(f) The agency’s decision to deny a petition for variance or waiver shall be subject to judicial review in accordance with Code Section 50-13-19. The validity of any variance or waiver which is granted by an agency may be

determined in an action for declaratory judgment in accordance with Code Section 50-13-10.

(g) Nothing in this Code section shall authorize an agency to grant variances or waivers to any statutes or to the agency itself or any other agency. This Code section does not supersede and is cumulative of any other variance or waiver provisions in other statutes or rules.

(h) This Code section shall not apply, and no variance or waiver shall be sought or authorized, when:

(1) Any agency rule or regulation has been adopted or promulgated in order to implement or promote a federally delegated program;

(2) Any rule or regulation is promulgated or adopted by the Department of Corrections concerning any institutional operations or inmate activities;

(3) Any rule or regulation is promulgated or adopted by the State Board of Pardons and Paroles regarding clemency considerations and actions;

(4) Any rule or regulation is promulgated or adopted by the Department of Community Health;

(5) Any rule or regulation is promulgated or adopted by the Department of Agriculture;

(6) Any rules, regulations, standards, or procedures are adopted or promulgated by the Department of Natural Resources for the protection of the natural resources, environment, or vital areas of this state; or

(7) The granting of a waiver or variance would be harmful to the public health, safety, or welfare.

(i) All waivers granted pursuant to this Code section shall be reported to the General Assembly within the first ten days of the next session. Such information shall contain the name, address, and telephone number of the person or corporation obtaining such waiver; the name, address, and telephone number of any representative or attorney who represented such person or corporation requesting the waiver; and a description of the waiver granted including a detail of the variance from any rule or regulation. (Code 1981, § 50-13-9.1, enacted by Ga. L. 1997, p. 1521, § 2; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 296, § 22.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “agency” was substituted for “department” and “agency’s” was substituted for “department’s” in subsections (d), (e), (f), and (g), and

“State” was deleted preceding “Department of Community Health” in paragraph (h)(4).

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U.L. Rev. 301 (1997).

50-13-10. Declaratory judgment on validity of rules; venue for actions.

(a) The validity of any rule, waiver, or variance may be determined in an action for declaratory judgment when it is alleged that the rule, waiver, or variance or its threatened application interferes with or impairs the legal rights of the petitioner. A declaratory judgment may be rendered whether or not the petitioner has first requested the agency to pass upon the validity of the rule, waiver, or variance in question.

(b) The agency shall be made a party to the action and a copy of the petition shall be served on the Attorney General. The action shall be brought in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner. When the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state. All actions for declaratory judgment, however, with respect to any rule, waiver, or variance of the Public Service Commission must be brought in the Superior Court of Fulton County.

(c) Actions for declaratory judgment provided for in this Code section shall be in accordance with Chapter 4 of Title 9, relating to declaratory judgments. (Ga. L. 1964, p. 338, § 11; Ga. L. 1965, p. 283, § 10; Ga. L. 1975, p. 404, § 4; Ga. L. 1992, p. 6, § 50; Ga. L. 1997, p. 1521, § 3.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 301 (1997). For article, “Administrative Law”, see 53 Mercer L. Rev. 81 (2001). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

For note discussing the denial of social security benefits to dependent children pursuant to substitute father provisions as violative of due process, prior to the 1967 amendments to the Georgia Public Assistance Act (O.C.G.A. Art. 1, Ch. 4, T. 49), see 15 J. of Pub. L. 349 (1966).

JUDICIAL DECISIONS

Ga. L. 1965, p. 283, § 10 (see O.C.G.A. § 50-13-10) must be construed in conjunction with Ga. L. 1965, p. 283, §§ 2-4 (see O.C.G.A. § 50-13-2). *Irvin v. Woodliff*, 125 Ga. App. 214, 186 S.E.2d 792 (1971).

Construction with O.C.G.A. § 9-4-7(c). — Georgia Court of Appeals disagreed that the “may be determined” language in O.C.G.A. § 50-13-10(a) was evidence that the statute was but one of several methods by which to challenge the validity of an agency rule and that O.C.G.A. § 9-4-7(c), as well as case authority, impliedly contemplated the legitimacy of challenges to agency rules outside the purview of the Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq. *Live Oak*

Consulting, Inc. v. Dep’t of Cmty. Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

Applicability where statute under which rule promulgated attacked. — Where complaint seeking declaratory judgment attacks the constitutionality of the statute under which the challenged rule was promulgated as well as the rule itself, O.C.G.A. § 50-13-10 is inapplicable. *Ledford v. Department of Transp.*, 253 Ga. 717, 324 S.E.2d 470 (1985).

Hazardous waste rules. — O.C.G.A. § 50-13-10 did not authorize plaintiffs to obtain declaratory judgment as to the validity of rules enacted pursuant to the Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq., where plaintiffs were con-

tending that the Act and rules promulgated thereunder were unconstitutional. *George v. Department of Natural Resources*, 250 Ga. 491, 299 S.E.2d 556 (1983).

Standing. — County lacked standing to challenge the state's rules restricting emissions of volatile compounds; while it presented evidence that the rules might deter some investment in the county, there was no evidence that the rules had actually done so, and whether any economic harm to its own emission sources would be caused by the rules was speculative. *Board of Natural Resources v. Monroe County*, 252 Ga. App. 555, 556 S.E.2d 834 (2001).

No case or controversy. — Trial court's order granting a declaratory judgment to a developer was reversed because a case or controversy was lacking, surrounding the validity of Ga. Comp. R. & Regs. 672-9-.05, as no controversy existed after the rule's adoption and a developer filed its amended petition seeking the same, the rights of the parties accrued, and their positions regarding the constitutionality and the applicability of the Department of Transportation's rule were firmly established. *DOT v. Peach Hill Props.*, 280 Ga. 624, 631 S.E.2d 660 (2006).

Corporation registration form not "rule." — An "ST-1 form," which corporations are required by the Department of Revenue to use when applying for a certificate of registration, was not a "rule" within the purview of O.C.G.A. § 50-13-10. *Roy E. Davis & Co. v. Department of Revenue*, 256 Ga. 709, 353 S.E.2d 195 (1987).

Department manual not "rule." — Department of Medical Assistance (now Department of Community Health) manual, which contained "the terms and conditions for receipt of medical assistance reimbursement in Georgia," was not a "rule" and therefore could not be reviewed in a declaratory judgment action. *Georgia Dep't of Medical Assistance v. Beverly Enters., Inc.*, 261 Ga. 59, 401 S.E.2d 499 (1991).

Appeal from driver's license suspension dismissed. — An appeal from a ruling on a declaratory judgment action that was essentially an appeal from an administrative decision to suspend a driver's license was dismissed since the driver was required to proceed by application for discretionary appeal. *Miller v. Georgia Dep't of Pub. Safety*, 265 Ga. 62, 453 S.E.2d 725 (1995).

Failure to pursue remedy. — Plaintiff teachers denied renewable teaching certificates mistakenly failed to pursue the available remedy under O.C.G.A. § 50-13-10 when the teachers instead waited until after the education board's rules had already been declared invalid to bring an action seeking damages as the state had not "consented" to be sued for damages based upon the alleged invalidity or unconstitutionality of the rules and regulations promulgated and implemented by the state's departments and agencies. *State Bd. of Educ. v. Drury*, 263 Ga. 429, 437 S.E.2d 290 (1993).

Trial court properly denied the defendant's amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., by filing an action for a declaratory judgment; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when the division promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. *Palmaka v. State*, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Georgia Industrial Loan Commissioners' authority to investigate. — Trial court properly dismissed a declaratory judgment action brought by a bank and a cash advance lender, which was operating as an agent for the bank, to stop the Georgia Industrial Loan Commissioner from conducting an investigation of their lending activities because the Commissioner was authorized to conduct an investigation of the two entities' loan activities, in spite of the lender's claim that the bank and the lender were operating under the authority of federal banking law. *BankWest, Inc. v. Oxendine*, 266 Ga. App. 771, 598 S.E.2d 343 (2004).

Application of sovereign immunity. — Trial court did not err in finding that the APA governed a declaratory judgment action filed against a state agency, and that

sovereign immunity barred any further discovery, pursuant to O.C.G.A. § 50-13-10; hence, as a result, when plaintiff consultant failed to comply with § 50-13-10, the trial court could do no more than grant the agency a protective order, and could not take any action beyond that, including declaring that the department's rules regarding health benefits could not be challenged. *Live Oak Consulting, Inc. v. Dep't of Cmty.*

Health, 281 Ga. App. 791, 637 S.E.2d 455 (2006).

Cited in *Pope v. Cokinos*, 231 Ga. 79, 200 S.E.2d 275 (1973); *Caldwell v. Liberty Mut. Ins. Co.*, 248 Ga. 282, 282 S.E.2d 885 (1981); *Outdoor Adv. Ass'n v. DOT*, 186 Ga. App. 550, 367 S.E.2d 827 (1988); *State Bd. of Educ. v. Drury*, 263 Ga. 429, 437 S.E.2d 290 (1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 22A Am. Jur. 2d, Declaratory Judgments, § 81 et seq.

Am. Jur. Pleading and Practice Forms. — 24A Am. Jur. Pleading and Practice Forms, Venue, § 1 et seq.

C.J.S. — 26 C.J.S., Declaratory Judgments, § 30.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 3-101 et seq.

50-13-11. Declaratory rulings by agencies.

Each agency shall provide by rule for the filing and prompt disposition of petitions for declaratory rulings as to the applicability of any statutory provision or of any rule or order of the agency, provided that nothing herein shall limit or impair the right of an agency to seek the opinion of the Attorney General on any question of law connected with the duties of the agency pursuant to Code Section 45-15-3 or any other applicable statutory or constitutional provision. Rulings disposing of petitions have the same status as agency decisions or orders in contested cases. (Ga. L. 1964, p. 338, § 12; Ga. L. 1965, p. 283, § 11.)

JUDICIAL DECISIONS

Letter did not constitute declaratory ruling because director of agency did not issue the letter pursuant to any rule consistent with O.C.G.A. § 50-13-11. *North Fulton Medical Ctr., Inc. v. Roach*, 265 Ga. 125, 453 S.E.2d 463 (1995).

Declaratory ruling permissible if procedural rules followed. — While the law explicitly allowed a party to request a declaratory ruling from an administrative agency concerning the application of agency rules, the two associations failed to follow the appropriate procedures for obtaining an interpretation of a regulation from the state revenue department; thus, the associations were not entitled to a declaratory ruling since the associations circumvented the prescribed procedure for challenging the state

revenue department's regulations. *Ga. Oilmen's Ass'n v. Ga. Dep't of Revenue*, 261 Ga. App. 393, 582 S.E.2d 549 (2003).

Intervention in proceedings authorized. — A nonprofit insurance company should have been allowed to intervene in proceedings attacking the implementation of a plan of conversion from nonprofit to for-profit status adopted and approved by the Commissioner of Insurance pursuant to O.C.G.A. § 33-20-34, which, after approval, became a binding agreement between the Commissioner and the company. *Blue Cross & Blue Shield of Ga., Inc. v. Deal*, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Cited in *Age Int'l, Inc. v. Miller*, 830 F. Supp. 1484 (N.D. Ga. 1993).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 70, 245.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 161 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 293.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 2-103.

ALR. — Applicability of stare decisis doctrine to decisions of administrative agencies, 79 ALR2d 1126.

50-13-12. Department of Revenue to hold hearing when demanded by aggrieved taxpayer; election of remedies.

(a) The Department of Revenue shall hold a hearing upon written demand therefor by any taxpayer aggrieved by any act of the department in a matter involving his liability for taxes, or any failure of the department to act in such a matter if the failure is deemed an act under any provision of a tax statute administered by the department, or by any order of the department in such a matter other than an order on a hearing of which the taxpayer was given actual notice or at which the taxpayer appeared as a party.

(b) Any such demand for a hearing shall be made within 30 days after the act or failure to act causing the injury and shall specify in what respect the taxpayer is aggrieved and the grounds to be relied upon as a basis for the relief to be demanded at the hearing; and, unless postponed by mutual consent, the hearing shall be held within 30 days after receipt by the Department of Revenue of the demand therefor. The proceeding shall have the status of a contested case.

(c) Pending the hearing and the decision thereon the Department of Revenue may suspend or postpone the effective date of its previous action.

(d) This Code section is not intended to require that the aggrieved taxpayer must demand a hearing hereunder before pursuing judicial remedies which may be available to him, but an aggrieved taxpayer who does demand a hearing under this Code section shall be deemed to have elected the remedies provided in this Code section and in Code Section 50-13-19 as his exclusive remedies. (Ga. L. 1964, p. 338, § 13; Ga. L. 1965, p. 283, § 12.)

Cross references. — Appeal to superior court from order, ruling, or finding of state revenue commissioner, § 48-2-59.

Law reviews. — For article discussing and comparing the principal means by which the Georgia taxpayer may obtain judicial review

of his state tax liability with emphasis on the income tax and the sales tax, see 27 Mercer L. Rev. 309 (1975). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978).

JUDICIAL DECISIONS

Constitutionality of tax procedures. — The state could not hold out what plainly appeared to be a “clear and certain” postdeprivation remedy and then declare, only after the disputed taxes had been paid, that no such remedy existed. *Reich v. Collins*, 513 U.S. 106, 115 S. Ct. 547, 130 L. Ed. 2d 454 (1994).

Adequacy of procedures for litigating tax matters. — The absence of a provision for class actions does not render Georgia’s procedures for litigating tax matters “inadequate” within the meaning of the federal Tax Injunction Act, 28 U.S.C. § 1341. *Waldron v. Collins*, 788 F.2d 736 (11th Cir.), cert. denied, 479 U.S. 884, 107 S. Ct. 274, 93 L. Ed. 2d 250 (1986).

Time limit on hearing not mandatory. — The provision of O.C.G.A. § 50-13-12(b) that a “hearing shall be held within 30 days after receipt ...of the demand therefor” is directory and not mandatory. *Collins v. Birchfield*, 214 Ga. App. 144, 447 S.E.2d 38 (1994).

Cited in *Epstein v. Maddox*, 277 F. Supp. 613 (N.D. Ga. 1967); *Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon*, 233 Ga. 507, 212 S.E.2d 341 (1975); *Age Int’l, Inc. v. Miller*, 830 F. Supp. 1484 (N.D. Ga. 1993); *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994).

50-13-13. Opportunity for hearing in contested cases; notice; counsel; subpoenas; record; enforcement powers; revenue cases.

(a) In addition to any other requirements imposed by common law, constitution, statutes, or regulations:

(1) In any contested case, all parties shall be afforded an opportunity for hearing after reasonable notice served personally or by mail;

(2) The notice shall include:

(A) A statement of the time, place, and nature of the hearing;

(B) A statement of the legal authority and jurisdiction under which the hearing is to be held;

(C) A reference to the particular section of the statutes and rules involved;

(D) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time, the notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished; and

(E) A statement as to the right of any party to subpoena witnesses and documentary evidence through the agency;

(3) Opportunity shall be afforded all parties to be represented by legal counsel and to respond and present evidence on all issues involved;

(4) Unless precluded by law, informal disposition may be made of any contested case by stipulation, agreed settlement, consent order, or default;

(5) Unless specifically precluded by statute, in addition to the agency, any contested case may be held before any agency representative who has been selected and appointed by the agency for such purpose. Before appointing a hearing representative, the agency shall determine that the person under consideration is qualified by reason of training, experience, and competence;

(6) The agency, the hearing officer, or any representative of the agency authorized to hold a hearing shall have authority to do the following: administer oaths and affirmations; sign and issue subpoenas; rule upon offers of proof; regulate the course of the hearing, set the time and place for continued hearings, and fix the time for filing briefs; dispose of motions to dismiss for lack of agency jurisdiction over the subject matter or parties or for any other ground; dispose of motions to amend or to intervene; provide for the taking of testimony by deposition or interrogatory; and reprimand or exclude from the hearing any person for any indecorous or improper conduct committed in the presence of the agency or the hearing officer;

(7) Subpoenas shall be issued without discrimination between public and private parties. When a subpoena is disobeyed, any party may apply to the superior court of the county where the contested case is being heard for an order requiring obedience. Failure to comply with such order shall be cause for punishment as for contempt of court. The costs of securing the attendance of witnesses, including fees and mileage, shall be computed and assessed in the same manner as prescribed by law in civil cases in the superior court;

(8) A record shall be kept in each contested case and shall include:

(A) All pleadings, motions, and intermediate rulings;

(B) A summary of the oral testimony plus all other evidence received or considered except that oral proceedings or any part thereof shall be transcribed or recorded upon request of any party. Upon written request therefor, a transcript of the oral proceeding or any part thereof shall be furnished to any party of the proceeding. The agency shall set a uniform fee for such service;

(C) A statement of matters officially noticed;

(D) Questions and offers of proof and rulings thereon;

(E) Proposed findings and exceptions;

(F) Any decision (including any initial, recommended, or tentative decision), opinion, or report by the officer presiding at the hearing; and

(G) All staff memoranda or data submitted to the hearing officer or members of the agency in connection with their consideration of the case; and

(9) Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(b) In proceedings before the agency, the hearing officer, or any representative of the agency authorized to hold a hearing, if any party or an agent or employee of a party disobeys or resists any lawful order of process; or neglects to produce, after having been ordered to do so, any pertinent book, paper, or document; or refuses to appear after having been subpoenaed; or, upon appearing, refuses to take the oath or affirmation as a witness; or after taking the oath or affirmation, refuses to testify, the agency, hearing officer, or other representative shall have the same rights and powers given the court under Chapter 11 of Title 9, the "Georgia Civil Practice Act." If any person or party refuses as specified in this subsection, the agency, hearing officer, or other representative may certify the facts to the superior court of the county where the offense is committed for appropriate action, including a finding of contempt. The agency, hearing officer, or other representative shall have the power to issue writs of fieri facias in order to collect fines imposed for violation of a lawful order of the agency, hearing officer, or other representative.

(c) Except in cases in which a hearing has been demanded under Code Section 50-13-12, subsection (a) of this Code section and the other provisions of this chapter concerning contested cases shall not apply to any case arising in the administration of the revenue laws, which case is subject to a subsequent de novo trial of the law and the facts in the superior court. (Ga. L. 1964, p. 338, § 14; Ga. L. 1965, p. 283, § 13; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 1270, § 9.)

Cross references. — Subpoenas generally, § 24-10-20 et seq. Conduct of hearings before Public Service Commission by hearing officers, § 46-2-58.

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27 Mercer L. Rev. 309 (1975). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33

Mercer L. Rev. 323 (1981). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

For note, "Notice Requirements and the Entrapment Defense Under the Georgia Administrative Procedure Act" in light of *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 510 (1977), see 30 Mercer L. Rev. 347 (1978).

For comment on *Pope v. Cokinos*, 232 Ga. 425, 207 S.E.2d 63 (1974), see 26 Mercer L. Rev. 337 (1974).

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Agency's choice of adoptive parents. — Contesting of adoption agency's choice of adoptive parents by the child's foster parents is not a "contested case" within the meaning of this section, as the choice is entirely discretionary in nature. *Drummond v. Fulton County Dep't of Family & Children Servs.*, 237 Ga. 449, 228 S.E.2d 839 (1976),

cert. denied, 432 U.S. 905, 97 S. Ct. 2949, 53 L. Ed. 2d 1077 (1977).

Rescheduling of the hearing on the suspension of a driver's license for refusal to submit to a breath analysis test beyond the 30-day period provided for in former subsection (d) of O.C.G.A. § 40-5-55 involves no "unlawful procedure" but is within

the scope of statutory authority. *Hardison v. Fayssoux*, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

No subpoena authority for discovery in teacher termination action. — There is no statutory authority for the Professional Practices Commission (sitting for a local school board) to issue subpoenas for discovery purposes in teacher termination cases. *Lansford v. Cook*, 252 Ga. 414, 314 S.E.2d 103 (1984).

No entitlement to tape recording where transcript provided. — Where appellant is provided with a transcript of the administrative hearing, appellant is not entitled to the tape recording from which the transcript was prepared. *Nolen v. Department of Human Resources*, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Close scrutiny where prosecutor acts as legal advisor for hearing board. — When a prosecutor is also acting as the legal advisor for the hearing board, the court must closely scrutinize the relationship between the two. If it appears that the prosecutor has prevailed upon the board in an unfair manner, the board's decision should not be affirmed. *Schaffer v. State Bd. of Veterinary Medicine*, 143 Ga. App. 68, 237 S.E.2d 510 (1977), overruled on other grounds, *In re Kennedy*, 266 Ga. 249, 466 S.E.2d 1 (1996), overruled on other grounds, *In re Henley*, 271 Ga. 21, 518 S.E.2d 418 (1999).

Judicial immunity for Peace Officer Standards and Training Council. — Based on the statutory scheme as to Georgia Peace Officer Standards and Training Council's power to certify or discipline a police chief and the council's investigative powers under O.C.G.A. §§ 35-8-7.1 and 35-8-7.2, and the chief's remedies under Georgia's Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., the council's members and investigators had absolute immunity via quasi-judicial immunity, and thus, the chief's civil rights action against the council members and investigators, alleging through 42 U.S.C. §§ 1983 and 1985(3), violations of the chief's first and fourteenth amendment substantive due process rights, was dismissed.

Evans v. Ga. Peace Officer Stds. & Training Council, F. Supp. 2d , 2006 U.S. Dist. LEXIS 19415 (N.D. Ga. Mar. 29, 2006).

Letter of concern issued by professional licensing board. — Where the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the board could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued as the result of contested case proceedings. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Motion to intervene. — Hearing officer did not err in allowing the healthcare provider's competitors to intervene in the proceeding to determine whether the healthcare provider was required to obtain a certificate of need; since the intervenors were competitors of the certificate of need applicant, the intervenors had standing. *N. Atlanta Scan Assocs. v. Dep't of Cmty. Health*, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Rule nisi issued by Public Service Commission provided reasonable notice of the commission's intent to investigate the authorized return on equity of a Tier 2 local exchange company and to adjust the commission's rates prior to the commission's election of alternative regulation. *Georgia Pub. Serv. Comm'n v. ALLTEL Ga. Communications Corp.*, 244 Ga. App. 645, 536 S.E.2d 542 (2000).

Cited in *Salerno v. Board of Dental Exmrs.*, 119 Ga. App. 743, 168 S.E.2d 875 (1969); *Pope v. Cokinos*, 231 Ga. 79, 200 S.E.2d 275 (1973); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Georgia Real Estate Comm'n v. Horne*, 141 Ga. App. 226, 233 S.E.2d 16 (1977); *Department of Natural Resources v. American Cyanamid Co.*, 239 Ga. 740, 238 S.E.2d 886 (1977); *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n*, 152 Ga. App. 366, 262 S.E.2d 628 (1979); *National Council on Comp. Ins. v. Caldwell*, 154 Ga. App. 528, 268 S.E.2d 793 (1980); *Shepard v. Byrd*, 581 F. Supp. 1374 (N.D. Ga. 1984).

OPINIONS OF THE ATTORNEY GENERAL

Purpose and intent of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) is not to create additional substantive requirements in what is cause for revocation of a license by an administrative agency; rather, the purpose and intent of the law is to provide uniform, minimum procedural requirements to be followed by an administrative agency in determining the legal rights, duties, or privileges of a party in a matter in which the particular agency regulates and to which the law applies. 1965-66 Op. Att'y Gen. No. 65-73.

Notice and hearing required before license revocation. — The due process clauses of U.S. Const., amend. 14 and Ga. Const. 1976, Art. I, Sec. I, Para. I (see Ga. Const. 1983, Art. I, Sec. I, Para. I) require notice and a hearing by an administrative agency before any action may be taken to revoke a license; this constitutional requirement must be met even though the act granting the right to revoke the license provides for an appeal to the superior court. 1958-59 Op. Att'y Gen. p. 1.

Law should prescribe notice and hearing. — It is necessary that the law under which administrative hearings are conducted prescribe notice and hearing, and it is not sufficient that a notice and hearing are given, even though not required by law. 1958-59 Op. Att'y Gen. p. 1.

Conduct of hearings in informal manner. — With the passage of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) the bell was tolled on the practice of conducting hearings in an informal manner except by

stipulation of the parties, agreed settlement, the entry of consent orders, or defaults. 1965-66 Op. Att'y Gen. No. 66-36.

Hearings by Office of State Administrative Hearings. — Unless otherwise exempted or excluded, contested cases not presided over by the agency head or board or body which is the ultimate decision maker are to be conducted by the Office of State Administrative Hearings. 1995 Op. Att'y Gen. No. 95-5.

Commissioner of Agriculture not obligated to provide formal administrative appeal. — The Commissioner of Agriculture has neither a statutory nor a constitutional obligation to provide a formal means of administratively appealing the decision to bar a party from a state-owned and regulated farmers' market. 1965-66 Op. Att'y Gen. No. 66-217.

Momentary compliance by one with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of the license, would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in non-compliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in non-compliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 298 et seq., 363, 368.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 37, 95, 106 et seq., 157 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 223 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 4-201 et seq.

ALR. — Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 ALR2d 552.

Administrative decision by officer not

present when evidence was taken, 18 ALR2d 606.

Power of administrative agency, in investigation of nonjudicial nature, to issue subpoenas against persons not subject to agency's regulatory jurisdiction, 27 ALR2d 1208.

Waiver of, or estoppel to assert, failure to give required notice of claim of injury to municipality, county, or other governmental agency or body, 65 ALR2d 1278.

Revocation of teacher's certificate for moral unfitness, 97 ALR2d 827.

Effectiveness of stipulation of parties or

attorneys, notwithstanding its violating form requirements, 7 ALR3d 1394.

Failure to give notice of application for default judgment where notice is required only by custom, 28 ALR3d 1383.

Right to assistance by counsel in administrative proceedings, 33 ALR3d 229.

Sufficiency of notice or hearing required

prior to termination of welfare benefits, 47 ALR3d 277.

Necessity of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 361.

Sufficiency of notice and hearing before revocation or suspension of motor vehicle driver's license, 60 ALR3d 427.

50-13-14. Intervention in contested cases.

In contested cases:

(1) Upon timely application, any person shall be permitted to intervene when a statute confers an unconditional right to intervene or when the representation of an applicant's interest is or may be inadequate; or

(2) Upon timely application, any person may be permitted to intervene when a statute confers a conditional right to intervene or when the applicant's claim or defense and the main action have a question of law or fact in common. In exercising its discretion, the agency shall consider whether the intervention will unduly delay or prejudice the adjudication of the rights of existing parties. (Ga. L. 1964, p. 338, § 15; Ga. L. 1965, p. 283, § 14.)

Cross references. — Intervention in proceedings before Public Service Commission, § 46-2-59.

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 1986, "an" was inserted preceding "applicant's" in paragraph (1).

JUDICIAL DECISIONS

Intervention in proceedings authorized. — A nonprofit insurance company should have been allowed to intervene in proceedings attacking the implementation of a plan of conversion from nonprofit to for-profit status adopted and approved by the Commissioner of Insurance pursuant to O.C.G.A. § 33-20-34, which, after approval, became a binding agreement between the Commis-

sioner and the company. *Blue Cross & Blue Shield of Ga., Inc. v. Deal*, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Cited in *National Council on Comp. Ins. v. Caldwell*, 154 Ga. App. 528, 268 S.E.2d 793 (1980); *Campaign for a Prosperous Georgia v. Georgia Power Co.*, 174 Ga. App. 263, 329 S.E.2d 570 (1985).

50-13-15. Rules of evidence in contested cases; official notice; conducting hearings by utilizing remote telephonic communications.

In contested cases:

(1) Irrelevant, immaterial, or unduly repetitious evidence shall be excluded. The rules of evidence as applied in the trial of civil nonjury cases in the superior courts shall be followed. When necessary to ascertain facts not reasonably susceptible of proof under such rules, evidence not admissible thereunder may be admitted, except where

precluded by statute, if it is of a type commonly relied upon by reasonably prudent men in the conduct of their affairs or if it consists of a report of medical, psychiatric, or psychological evaluation of a type routinely submitted to and relied upon by an agency in the normal course of its business. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interest of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;

(2) Documentary evidence may be received in the form of copies or excerpts if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original or have it established as documentary evidence according to the rules of evidence applicable to the superior courts of this state;

(3) A party may conduct such cross-examination as shall be required for a full and true disclosure of the facts;

(4) Official notice may be taken of judicially cognizable facts. In addition, official notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing, by reference in preliminary reports or otherwise, of the material noticed, including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence; and

(5) Any hearing which is required or permitted hereunder may be conducted by utilizing remote telephonic communications if the record reflects that all parties have consented to the conduct of the hearing by use of such communications and that such procedure will not jeopardize the rights of any party to the hearing. (Ga. L. 1964, p. 338, § 16; Ga. L. 1965, p. 283, §§ 15, 16; Ga. L. 1979, p. 1014, § 1; Ga. L. 1982, p. 871, §§ 1, 2.)

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Effect of O.C.G.A. § 50-13-15(4). — O.C.G.A. § 50-13-15(4) did not authorize the Board of Dentistry to use the board's expertise to compensate for the absence of key evidence not presented or noticed in issuing a letter of concern regarding a dentist's recommended treatment that allegedly fell below minimal professional standards. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

notice taken. — The last sentence of O.C.G.A. § 50-13-15(4) provides that the agency's experience, technical competence, and specialized knowledge may be utilized in the evaluation of the evidence. However, this in no way takes away from the requirement that in order to take official notice of a technical or scientific fact, the party shall be notified either before or during the hearing that such notice will be taken and the party should be afforded an opportunity to con-

Notice to party required of any official

test this issue. *Hicks v. Harden*, 133 Ga. App. 789, 213 S.E.2d 49 (1975).

Administrative agency must confine itself to record before the agency and afford opportunity for showings contrary to material facts of which official notice has been taken; to constitute fatal error it must appear that an administrative agency's journey outside the record worked substantial prejudice. *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n*, 152 Ga. App. 366, 262 S.E.2d 628 (1979).

Preponderance of evidence standard was applicable in a disciplinary proceeding conducted by the Board of Dentistry. *Georgia Bd. of Dentistry v. Pence*, 223 Ga. App. 603, 478 S.E.2d 437 (1996).

Proviso for use of certain evidence is that it is necessary to establish facts not reasonably susceptible of proof under the usual rules of evidence in civil nonjury cases. *Finch v. Caldwell*, 155 Ga. App. 813, 273 S.E.2d 216 (1980).

Failure to object to witness' qualifications constitutes waiver. — In rate increase request hearings, where the power company failed to object to an expert witness' qualifications either before or during the expert's testimony, any objection the company might have had was waived. *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Failure to call witnesses does not circumvent rules of evidence. — The mere failure to call witnesses apparently readily available does not render their testimony not reasonably susceptible of proof under the usual rules of evidence. *Finch v. Caldwell*, 155 Ga. App. 813, 273 S.E.2d 216 (1980); *McGahee v.*

Yamaha Motor Mfg. Corp., 214 Ga. App. 473, 448 S.E.2d 249 (1994).

What constitutes hearsay. — What clearly is hearsay cannot be viewed as commonly relied upon by men in conduct of their affairs. *Finch v. Caldwell*, 155 Ga. App. 813, 273 S.E.2d 216 (1980).

Hearsay character of medical reports does not bar consideration. — Fact that medical reports are hearsay does not mean that such reports could not be considered by hearing officer in making determination where they satisfy the requirements of this section. *Nolen v. Department of Human Resources*, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Effect of body looking beyond record. — The mere fact that the determining body has looked beyond the record proper does not invalidate its action unless substantial prejudice is shown to result. *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n*, 152 Ga. App. 366, 262 S.E.2d 628 (1979).

Inadmissibility of polygraph examination results. — Results of polygraph examination are not admissible into evidence, having no probative value. *Feltham v. Cofer*, 149 Ga. App. 379, 254 S.E.2d 499 (1979).

In the absence of a stipulation of admissibility, the general rule that the results of polygraph tests are not admissible into evidence applies; thus, the Board of Public Safety did not err in refusing to consider the results of the test. *Feltham v. Cofer*, 149 Ga. App. 379, 254 S.E.2d 499 (1979).

Cited in *Cofer v. Summerlin*, 147 Ga. App. 721, 250 S.E.2d 174 (1978); *Jackson Elec. Mbrshp. Corp. v. Ga. PSC*, 294 Ga. App. 253, 668 S.E.2d 867 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Conduct of hearings in informal manner. — With the passage of Ga. L. 1968, p. 338, § 1 et seq. (see O.C.G.A. Ch. 13, T. 50) the bell was tolled on the practice of conducting

hearings in an informal manner except by stipulation of the parties, agreed settlement, the entry of consent orders, or defaults. 1965-66 Op. Att'y Gen. No. 66-36.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 344 et seq.

C.J.S. — 73A C.J.S., Public Administrative

Law and Procedure, §§ 235 et seq., 264 et seq.

U.L.A. — Model State Administrative Pro-

cedure Act (U.L.A.) § 4-201 et seq.

ALR. — Necessity of some evidence at hearing to support decision of public board or official required to be made after or upon hearing, 123 ALR 1349.

Administrative decision or finding based

on evidence secured outside of hearing, and without presence of interested party or counsel, 18 ALR2d 552.

Hearsay evidence in proceedings before state administrative agencies, 36 ALR3d 12.

50-13-16. Proposal for decision in contested cases; opportunity to file exceptions and present briefs and arguments.

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or read the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this Code section. (Ga. L. 1964, p. 338, § 17.)

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Inapplicable to disability benefit proceedings. — Brief and oral argument provisions of this section are inapplicable to disability

benefit proceedings. *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975).

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A. § 1 et seq.

ALR. — Necessity of some evidence at

hearing to support decision of public board or official required to be made after or upon hearing, 123 ALR 1349.

Administrative decision by officer not present when evidence was taken, 18 ALR2d 606.

50-13-17. Initial decisions in contested cases; review of initial decisions; final decisions and orders; Public Service Commission exceptions.

(a) In contested cases in which the agency has not presided at the reception of the evidence, the agency representative who presided shall initially decide the case or the agency shall require the entire record before the agency representative to be certified to it for initial decision. When the representative makes the initial decision, and in absence of an application to the agency within 30 days from the date of notice of the initial decision for review, or an order by the agency within such time for review on its motion, the initial decision shall, without further proceedings, become the

decision of the agency. On review from the initial decision of the representative, the agency shall have all the powers it would have in making the initial decision and, if deemed advisable, the agency may take additional testimony or remand the case to the hearing representative for such purpose. When the agency makes the initial decision without having presided at the reception of evidence, the agency representative shall first recommend a decision, a copy of which shall be sent to each party and which shall be made a part of the record.

(b) A final decision or order adverse to a party, other than the agency, in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated, and the effective date of the decision or order. Findings of fact shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Each agency shall maintain a properly indexed file of all decisions in contested cases, which file shall be open for public inspection with the exceptions provided in paragraph (4) of subsection (a) of Code Section 50-13-3. A copy of the decision or order and accompanying findings and conclusions shall be delivered or mailed promptly to each party or to his attorney of record. Nothing in this Code section shall prevent agencies from entering summary decisions or orders for contested cases informally disposed of under paragraph (4) of subsection (a) of Code Section 50-13-13. Moreover, nothing in this Code section shall prevent the parties to a contested case before the Public Service Commission from waiving the requirements of this Code section relating to findings of fact and conclusions of law, nor preclude the commission from adopting a rule or rules prescribing the procedure whereby parties to a contested case before it may waive such requirements.

(c) Each agency shall render a final decision in contested cases within 30 days after the close of the record required by Code Section 50-13-13 except that any agency, by order, may extend such period in any case in which it shall find that the complexity of the issues and the length of the record require an extension of the period, in which event the agency shall render a decision at the earliest date practicable. Notwithstanding any other provisions of this law to the contrary, the procedures prescribed by Code Section 46-2-25, relating to procedure for utility rate changes, shall be applicable to and available to any person, firm, or corporation subject to the jurisdiction of the Public Service Commission; and nothing contained herein shall be deemed to abrogate or limit, in any manner, such Code section as it pertains to any rate, charge, classification, or service which may constitute the basis of a contested case, proceeding, hearing, or matter before the Public Service Commission.

(d) The Public Service Commission shall not be required to include findings of fact and conclusions of law in its orders and decisions in cases in which it presides at the reception of the evidence where no person appears

in protest or opposition to the relief or authority sought; provided, however, that such cases shall not include those in which the relief sought is an increase or decrease in the rate or rates of any person subject to its jurisdiction; and provided, further, that, if an aggrieved person files a petition seeking judicial review pursuant to Code Section 50-13-19 with respect to such an order or decision, the Public Service Commission shall nevertheless prepare such findings of fact and conclusions of law and include the same in the record of the proceedings transmitted to the reviewing court pursuant to subsection (e) of Code Section 50-13-19. (Ga. L. 1964, p. 338, § 18; Ga. L. 1966, p. 333, § 1; Ga. L. 1975, p. 404, §§ 5-7; Ga. L. 1988, p. 1936, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “a” was in-

serted following “shall render” in the first sentence of subsection (c).

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Construction with other statutes. — O.C.G.A. § 46-2-25 supercedes contrary provisions of the Georgia Administrative Procedure Act, O.C.G.A. § 50-13-17, with regard to the judicial review of decisions made by the Georgia Public Service Commission. *Atmos Energy Corp. v. Ga. PSC*, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Natural gas distribution company could not challenge a rate change ruling by the Georgia Public Service Commission (PSC) because the order was not a final order under O.C.G.A. § 46-2-25(d) as the language indicated that it was only an interim decision; § 46-2-25 did not mandate the entry of a final order at the end of the six-month “file and suspend” period, and O.C.G.A. § 50-13-17(b) of the Administrative Procedure Act did not prevail over the more restrictive requirements imposed by § 46-2-25(d) as to the manner in which the PSC rendered a decision. *Atmos Energy Corp. v. Ga. PSC*, 285 Ga. 133, 674 S.E.2d 312 (2009).

When initial decisions deemed final. — The 30-day period for an aggrieved party to act under subsection (a) prevents that party from keeping the initial decision in abeyance indefinitely. Also, it serves to activate that decision as the final agency decision without requiring the agency itself to review all cases decided initially by a hearing officer, whether contested or not contested. *Department of Pub. Safety v. MacLafferty*, 230 Ga. 22, 195 S.E.2d 748 (1973).

Aggrieved party cannot bypass agency re-

view. — Subsection (a) does not allow a party dissatisfied with the initial decision rendered by a hearing officer to bypass the review available within the agency and directly seek judicial review in the courts. *Department of Pub. Safety v. MacLafferty*, 230 Ga. 22, 195 S.E.2d 748 (1973).

Reasons for imposing more severe sanctions must appear in record. — It is necessary that whenever the Real Estate Commission “reviews” a hearing officer’s decision and imposes a more severe sanction than “recommended” the reasons for so doing must affirmatively appear as part of the record, otherwise the procedure of “review” under subsection (a) would have a “chilling” effect on a licensee’s decision to exercise the licensee’s right to review. *Georgia Real Estate Comm’n v. Horne*, 141 Ga. App. 226, 233 S.E.2d 16 (1977).

Sufficiency of findings of fact. — Where the Public Service Commission granted a rate increase, but disallowed some of the utility company’s costs in calculating the rate base for a fair increase because the commission concluded that some of the costs were the result of the company’s imprudent management of the project, the agency’s decision was within the agency’s authority, and was supported by the facts. *Georgia Power Co. v. Georgia Pub. Serv. Comm’n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Validity of decision rendered more than 30 days after close of record. — The Board of Dentistry’s decision to sanction a dentist was not void for want of jurisdiction, even

though the decision was rendered more than 30 days following the close of the record since no harm was shown nor authority withdrawn. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Scope of appeal officer's review. — Since the credibility of witnesses is a question that must be decided by the factfinder who sees and hears the witnesses and is in a position to evaluate their demeanor, an administrative appeal officer's substitution of an appeal officer's judgment for that of the administrative hearing officer is impermissible. *Atkinson v. Ledbetter*, 183 Ga. App. 739, 360 S.E.2d 66 (1987).

Agency not bound by administrative law judge's findings of fact. — Commissioner of the Georgia Department of Revenue was not bound by an administrative law judge's (ALJ's) finding of fact that a taxpayer had not elected tax treatment of the sale of all the taxpayer's stock under 26 U.S.C. § 338(h)(10). As the commissioner's finding

that the taxpayer had made a § 338 election was supported by some evidence, the trial court erred by reinstating the ALJ's ruling. *Ga. Dep't of Revenue v. Trawick Constr. Co.*, 296 Ga. App. 275, 674 S.E.2d 350 (2009).

Cited in *Smith v. UMW*, 180 F. Supp. 796 (M.D. Ga. 1958); *Hood v. Rice*, 120 Ga. App. 691, 172 S.E.2d 170 (1969); *Howell v. Harden*, 231 Ga. 594, 203 S.E.2d 206 (1974); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Lee v. White Truck Lines*, 143 Ga. App. 94, 238 S.E.2d 120 (1977); *Department of Natural Resources v. American Cyanamid Co.*, 239 Ga. 740, 238 S.E.2d 886 (1977); *Carnes v. Crawford*, 246 Ga. 677, 272 S.E.2d 690 (1980); *Fluker v. Edwards*, 161 Ga. App. 418, 288 S.E.2d 684 (1982); *Safety Fire Comm'r v. U.S.A. Gas, Inc.*, 229 Ga. App. 807, 494 S.E.2d 706 (1997); *Ga. Peace Officers Stds. & Training Council v. Anderson*, 290 Ga. App. 91, 658 S.E.2d 840 (2008); *Greene v. Dep't of Cmty. Health*, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

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Receipt of notice of decision begins 30-day period. — The 30-day time period for seeking review of the initial decision by the agency does not begin to run until the date on which the respondent has notice of the decision. 1983 Op. Att'y Gen. No. 83-70.

Review of decision by agency. — If, after

reviewing the initial decision, the agency issues a final decision, the provisions of O.C.G.A. § 50-13-19(b) and not O.C.G.A. § 50-13-17(a) govern the process of seeking review of that decision. 1983 Op. Att'y Gen. No. 83-70.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 368 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 272 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 4-201 et seq.

ALR. — Necessity of some evidence at hearing to support decision of public board or official required to be made after or upon hearing, 123 ALR 1349.

Necessity, form, and contents of express finding of fact to support administrative determinations, 146 ALR 209.

Administrative decision or finding based on evidence secured outside of hearing, and without presence of interested party or counsel, 18 ALR2d 552.

Administrative decision by officer not present when evidence was taken, 18 ALR2d 606.

Power of administrative agency to reopen and reconsider final decision as affected by lack of specific statutory authority, 73 ALR2d 939.

Applicability of stare decisis doctrine to decisions of administrative agencies, 79 ALR2d 1126.

Doctrine of res judicata or collateral estoppel as barring relitigation in state criminal proceedings of issues previously decided in administrative proceedings, 30 ALR4th 856.

50-13-18. Procedure upon grant, denial, renewal, revocation, suspension, annulment, or withdrawal of licenses.

(a) When the grant, denial, or renewal of a license is required by law to be preceded by notice and opportunity for hearing, Code Section 50-13-13 shall apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or for a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or at a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency has sent notice, by certified mail or statutory overnight delivery to the licensee, of individual facts or conduct which warrant the intended action and the licensee has been given an opportunity to show compliance with all lawful requirements for the retention of the license except where:

(1) The agency finds that the public health, safety, or welfare imperatively requires emergency action and incorporates a finding to that effect in its order, in which case summary suspension of a license may be ordered pending proceedings for revocation or other action, which proceeding shall be promptly instituted and determined; or

(2) The agency's order is expressly required, by a judgment or a statute, to be made without the right to a hearing or continuance of any type.

(d)(1) In contested cases which could result in the revocation, suspension, or limitation of a license, when a licensee makes a general or specific request for exculpatory, favorable, or arguably favorable information that is relative to pending allegations concerning a license, an agency must furnish the requested information, indicate that no such information exists, or refuse to furnish the information requested prior to a hearing. An agency shall not be required to release information which is made confidential by state or federal law, until such requested information has been determined to be exculpatory, favorable, or arguably favorable pursuant to the in camera procedure specified in paragraph (2) of this subsection.

(2) Once an agency has furnished exculpatory, favorable, or arguably favorable information, has indicated that no such information exists, or has refused to furnish such information, the licensee may request a prehearing in camera inspection of the remainder of the investigative file by the person or persons presiding over the hearing. Such person or

persons shall furnish the licensee with all material that would aid in the licensee's defense that is exculpatory, favorable, or arguably favorable. Such person or persons shall seal a copy of the entire investigative file in order to preserve it in the event of an appeal. (Ga. L. 1964, p. 338, § 19; Ga. L. 1965, p. 283, § 17; Ga. L. 1982, p. 3, § 50; Ga. L. 1991, p. 1400, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

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Correction of nonwillful violation prior to hearing. — This section may well foreclose revocation in any proceeding initiated by the Board of Examiners in Optometry where the respondent demonstrates correction of a nonwillful violation of board rules before the time of the hearing. *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga.), *aff'd*, 419 U.S. 888, 95 S. Ct. 166, 42 L. Ed. 2d 134 (1974).

The function of an agency's finding pursuant to O.C.G.A. § 50-13-18(c)(1) that emergency action is required, unlike that of a notice, is not to inform the licensee of charges and define issues in a later proceeding. *Everett v. Georgia Bd. of Dentistry*, 264 Ga. 14, 441 S.E.2d 66 (1994).

Hearing and determination required before revocation of license. — Just as there can be no massive seizure of allegedly obscene materials for destruction without a prior adversary type hearing and determination of obscenity, there can be no valid revocation of a business license for having exhibited an obscene film without such prior hearing and determination. *106 Forsyth Corp. v. Bishop*, 362 F. Supp. 1389 (M.D. Ga. 1972), *aff'd*, 482 F.2d 280 (5th Cir. 1973), *cert. denied*, 422 U.S. 1044, 95 S. Ct. 2660, 45 L. Ed. 2d 696 (1975).

Intent of this section is to give licensee hearing, and opportunity to be heard where the licensee can demonstrate that at the time of the alleged violation the licensee was in full compliance with the law. *Hinson v. Georgia State Bd. of Dental Exmrs.*, 135 Ga. App. 488, 218 S.E.2d 162 (1975).

Application. — Healthcare provider did not show that the state community health

department committed an error of law in issuing a cease and desist letter directing the healthcare provider to stop operating the provider's diagnostic imaging center until the healthcare provider obtained a certificate of need; the letter of nonreviewability the healthcare provider cited was not a form of permission required by law and, thus, the revocation of the letter, which triggered the need for the certificate of need, was not subject to the notice requirements of O.C.G.A. § 50-13-18(c). *N. Atlanta Scan Assocs. v. Dep't of Cmty. Health*, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Under this section, licensee is not entitled to two hearings. *Hinson v. Georgia State Bd. of Dental Exmrs.*, 135 Ga. App. 488, 218 S.E.2d 162 (1975).

Service on office secretary. — Where process was served, at local office of association, upon an office secretary who had never been an officer or official member of the association, and who was not otherwise an agent or officer designated for service of process, the service of process was legally insufficient. *Masters v. Air Line Pilots Ass'n Int'l*, 144 Ga. App. 350, 241 S.E.2d 38 (1977).

Essential to notify driver that license suspended. — Actual or legal notice to the defendant that license has been suspended is an essential element of driving after one's license has been suspended. *Barrett v. State*, 173 Ga. App. 452, 326 S.E.2d 816 (1985).

Due process did not require a hearing prior to the summary suspension where the board did make the requisite finding under O.C.G.A. § 50-13-18(c)(1), which was supported by the arrest warrant for sexual offenses committed against children and the

alleged occurrence of the crimes at the same location where appellant practiced dentistry; furthermore, the proceeding to revoke appellant's license, with its accompanying procedural protections, was simultaneously instituted. *Everett v. Georgia Bd. of Dentistry*, 264 Ga. 14, 441 S.E.2d 66 (1994).

Cited in *Hicks v. Georgia State Bd. of Pharmacy*, 553 F. Supp. 314 (N.D. Ga. 1982); *City Council v. Crump*, 251 Ga. 594, 308 S.E.2d 180 (1983); *Hale v. State*, 188 Ga. App. 524, 373 S.E.2d 250 (1988); *Penaranda v. Cato*, 740 F. Supp. 1578 (S.D. Ga. 1990).

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Monetary compliance by one with history of noncompliance. — Administrative agency may proceed to revoke license of licensee in conformity with the law and the fact that the licensee shows at the agency's proceedings that the licensee is momentarily complying with all lawful requirements for the retention of a license would be immaterial; the real question to be resolved by the agency's proceedings would be whether the licensee had been in noncompliance with all lawful requirements for the retention of the license at the time that the licensee is alleged to have been in noncompliance with such requirements. 1965-66 Op. Att'y Gen. No. 65-73 (see O.C.G.A. Ch. 13, T. 50).

O.C.G.A. § 50-13-18 concerns compliance with requirements at time of alleged noncompliance. — The opportunity to show compliance referred to by this section is the opportunity to show compliance with lawful requirements at the time the licensee is

alleged to have been in noncompliance, and does not refer to a compliance at the time of a licensee receiving notice, or at the time of the institution of agency proceedings to revoke the license. 1965-66 Op. Att'y Gen. No. 65-73.

Distinctions between denials of applications for new or existing license. — An applicant would have no course of appeal should the applicant initially be denied a license for a school or an instructor's permit; however, the denial of an existing license would require a different result since where the state confers a license to engage in a profession, trade, or occupation not inherently inimical to the public welfare, such license becomes a valuable right which cannot be denied or abridged except after due notice and a fair and impartial hearing before an unbiased tribunal. 1968 Op. Att'y Gen. No. 68-278.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 88 et seq.

C.J.S. — 53 C.J.S., Licenses, § 58 et seq.

U.L.A. — Model State Administrative Procedure Acts (1961 and 1981), 15 U.L.A.

ALR. — Constitutionality of license statute or ordinance as affected by delegation of authority as to amount of bond of licensee, 107 ALR 1506.

50-13-19. Judicial review of contested cases.

(a) Any person who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review under this chapter. This Code section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

(b) Proceedings for review are instituted by filing a petition within 30 days after the service of the final decision of the agency or, if a rehearing is

requested, within 30 days after the decision thereon. The petition may be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner; or, if the petitioner is a corporation, the action may be brought in the Superior Court of Fulton County or in the superior court of the county where the petitioner maintains its principal place of doing business in this state; and provided, further, that all proceedings for review with respect to orders, rules, regulations, or other decisions or directives of the Commissioner of Agriculture may also be brought in the Superior Court of Tift County or the Superior Court of Chatham County. All proceedings for review, however, with respect to orders, rules, regulations, or other decisions or directives of the Public Service Commission must be brought in the Superior Court of Fulton County. Copies of the petition shall be served upon the agency and all parties of record. The petition shall state the nature of the petitioner's interest, the fact showing that the petitioner is aggrieved by the decision, and the ground as specified in subsection (h) of this Code section upon which the petitioner contends that the decision should be reversed or modified. The petition may be amended by leave of court.

(c) Irrespective of any provisions of statute or agency rule with respect to motions for rehearing or reconsideration after a final agency decision or order, the filing of such a motion shall not be a prerequisite to the filing of any action for judicial review or relief; provided, however, that no objection to any order or decision of any agency shall be considered by the court upon petition for review unless such objection has been urged before the agency.

(d)(1) The filing of the petition for judicial review in superior court does not itself stay enforcement of the agency decision. Except as otherwise provided in this subsection, the agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown.

(2) In cases involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources in which the petition for judicial review in superior court was filed by any person to whom such contested order or action is not directed, a stay shall not be granted unless by order of the superior court upon motion for a temporary restraining order or interlocutory injunction in accordance with Code Section 9-11-65.

(3) The provisions of paragraphs (1) and (2) of this subsection notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, no stay shall be authorized if the petition for judicial review in superior court was filed by any person to whom such order or action is not directed.

(4) In contested cases involving a license to practice medicine or a license to practice dentistry in this state, a reviewing court may order a stay or an agency may grant a stay only if the court or agency makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay.

(e) Within 30 days after the service of the petition or within further time allowed by the court, the agency shall transmit to the reviewing court the original or a certified copy of the entire record of the proceeding under review. By stipulation of all parties to the review proceedings, the record may be shortened. A party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs. The court may require or permit subsequent corrections or additions to the record.

(f) If, before the date set for hearing, application is made to the court for leave to present additional evidence and it is shown to the satisfaction of the court that the additional evidence is material and there were good reasons for failure to present it in the proceedings before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file that evidence and any modifications, new findings, or decisions with the reviewing court.

(g) The review shall be conducted by the court without a jury and shall be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, proof thereon may be taken in the court. The court, upon request, shall hear oral argument and receive written briefs.

(h) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the agency;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. (Ga. L. 1964, p. 338, § 20; Ga. L. 1975, p. 404, § 8; Ga. L. 1977, p. 316, § 1; Ga. L. 1978, p. 1362, § 1;

Ga. L. 1980, p. 820, § 1; Ga. L. 2004, p. 598, § 2; Ga. L. 2005, p. 818, § 3/SB 190.)

Law reviews. — For article discussing and comparing the principal means by which a Georgia taxpayer may obtain judicial review of his state tax liability with emphasis on income and sales tax, see 27 Mercer L. Rev. 309 (1975). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For article, "A Practical Guide to State Tax Practice," see 15 Ga. St. B.J. 74 (1978). For article surveying developments in Georgia workers' compensation law from mid-1980 through mid-1981, see 33 Mercer

L. Rev. 323 (1981). For annual survey of recent developments, see 38 Mercer L. Rev. 473 (1986). For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990). For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For article, "The Status of Administrative Agencies under the Georgia Constitution," see 40 Ga. L. Rev. 1109 (2006). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION

PREREQUISITES TO JUDICIAL REVIEW

SCOPE OF JUDICIAL REVIEW

SUFFICIENCY OF EVIDENCE

General Consideration

Presentation of additional evidence as reversible error. — Where the claimant does not agree that the superior court could consider additional evidence, such as personnel records, and thereby waive the requirement of subsection (f), as to an application made to the court for leave to present additional evidence, and where counsel for the commissioner did not waive the requirement of the law but specifically pointed out that the case should be remanded to the board of review for purposes of introduction of such additional evidence, including personnel records, there has been no waiver of the requirement of subsection (f), and the presentation of additional evidence constitutes reversible error. *Caldwell v. Corbin*, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Applicability. — In an action in which the school district appealed an administrative law judge's (ALJ) decision in favor of the parents under the Individuals with Disabilities Education Act (IDEA), and the district moved to dismiss the parents' counterclaim that sought additional reimbursement, arguing that the 30-day statute of limitations period in the Georgia Administrative Proce-

dure Act, O.C.G.A. § 50-13-19(b), should apply, that the parents were required to appeal by January 19, 2006, 30 days after the December 20, 2005, final decision, and the counterclaim was not filed until March 14, 2006, the court rejected that argument because the 2004 version of the IDEA, which provided a statute of limitations of 90 days, 20 U.S.C. § 1415(i)(2)(B), applied and the appeal was timely, however, the ALJ appropriately limited the compensatory education award under O.C.G.A. § 9-3-33, which provided for a two-year limitations period and the fraudulent concealment exception of O.C.G.A. § 9-3-96 did not apply because the parents received a diagnosis in October of 2002 that the child was autistic, and thus, even if the district fraudulently concealed matters pertaining to the child's condition so as to toll the two-year limitations period prior to October 2002, by October 2002, the parents had actual knowledge of the child's true condition and the tolling stopped; the claim for fraudulent concealment had to be asserted within two years of October 2002 in order to not be barred by O.C.G.A. § 9-3-33 and the concealment claim was not asserted until the January 2005 due process hearing request and the counterclaim was dismissed.

Dekalb County Sch. Dist. v. J.W.M., 445 F. Supp. 2d 1371 (N.D. Ga. 2006).

Affording due deference to an agency's interpretation of an agency's own rules regarding the reimbursement rate paid to a nursing facility, and pursuant to the sufficient evidence supporting that agency's decision, the appeals court found that the Department of Community Health did not err in finding that the 2001 cost report was the "last approved cost report," as that phrase was used in the Department's policies and procedures manual; hence, the superior court clearly erred in finding that the phrase was ambiguous, and thus had to be construed against the Department. Dep't of Cmty. Health v. Pruitt Corp., 284 Ga. App. 888, 645 S.E.2d 13 (2007).

An appeal from a decision of the commissioner of securities was governed by O.C.G.A. § 10-5-17, part of the Georgia Securities Act, and not O.C.G.A. § 50-13-19(b) of the Administrative Procedures Act (APA), as the more specific statute governed over the more general one; thus, the 20-day time period of the securities statute applied, not the 30-day time period of the APA. Slater v. State ex rel. Cox, 287 Ga. App. 738, 653 S.E.2d 58 (2007), cert. denied, 2008 Ga. LEXIS 166 (Ga. 2008).

Mandamus requirement of no other adequate remedy. — This section does not repeal second requirement for issuance of writ of mandamus, that there must be no other adequate remedy. Carnes v. Crawford, 246 Ga. 677, 272 S.E.2d 690 (1980) (see O.C.G.A. § 50-13-19).

Failure to subpoena witness bars use as "additional evidence." — Proffered testimony of a witness does not meet the requirements of O.C.G.A. § 50-13-19(f) where claimant could have requested, but did not, the Board of Review of the Employment Security Agency to issue a subpoena to compel the witness's attendance at the hearing pursuant to former § 34-8-8. Swafford v. Tanner, 180 Ga. App. 468, 349 S.E.2d 498 (1986).

Civil Practice Act inapplicable. — The Civil Practice Act (O.C.G.A. Ch. 11, T. 9) has no application to judicial review of administrative agency decisions under O.C.G.A. § 50-13-19. Hewes v. Cooler, 169 Ga. App. 762, 315 S.E.2d 276 (1984).

Insurance Commissioner's order determining rates. — There was a statutory right

to obtain judicial review of Insurance Commissioner's order determining the workers' compensation insurance rates under former Code 1933, § 114-609 (see O.C.G.A. § 34-9-130). National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Overweight vehicle assessment. — Person issued overweight vehicle assessment may prosecute action for judicial review of the administrative decision in the superior court of the county of his or her residence. DOT v. Del-Cook Timber Co., 248 Ga. 734, 285 S.E.2d 913 (1982).

Zoning cases. — Generally, zoning cases are applicable authority for consideration on the issue of the definition of the "aggrieved person" as employed in O.C.G.A. § 50-13-19. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff'd, 255 Ga. 253, 336 S.E.2d 790 (1985).

Proceedings under Individuals with Disabilities Education Act. — The 30 day limitations period applicable to administrative appeals, rather than the two year personal injury limitations period, applies to an appeal of an educational agency's final administrative decision under the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. Cory D. ex rel. Diane D. v. Burke County Sch. Dist., 285 F.3d 1294 (11th Cir. 2002).

Suspension of real estate broker's license may be for a period greater than the unexpired portion of the license, and such action by the real estate commission is neither in violation of statutory provisions nor in excess of the statutory authority of the agency. Georgia Real Estate Comm'n v. Howard, 133 Ga. App. 199, 210 S.E.2d 357 (1974).

Presumption that judge made required findings. — Whenever a superior court judge is required by law to make certain findings in order to return a verdict, the presumption is that the judge has made the required findings, absent a showing to the contrary. This presumption applies even if the required findings are not specifically set out in the order. Burson v. Collier, 226 Ga. 427, 175 S.E.2d 660 (1970).

Superior court error in reversing administrative decision to suspend driver's license. — See Hardison v. Fayssoux, 168 Ga. App. 398, 309 S.E.2d 397 (1983).

General Consideration (Cont'd)

The superior court erred in reversing the suspension of a driver's license and holding that, merely because the driver was found not guilty of a traffic violation, there could be no reasonable possibility that a civil judgment could be rendered against the driver. *Miles v. Carr*, 224 Ga. App. 247, 480 S.E.2d 282 (1997).

Temporary increase in utility's rates by superior court. — Utility's loss of revenue pending appeal of an agency's ratemaking order does not render the review procedures of O.C.G.A. § 50-13-19 an "inadequate remedy at law" and does not support the superior court's exercise of equity jurisdiction to grant a temporary increase. *Georgia Pub. Serv. Comm'n v. Southern Bell*, 254 Ga. 244, 327 S.E.2d 726 (1985).

Superior court may not issue interlocutory injunction. — Provision authorizing stay by a superior court exercising appellate jurisdiction under O.C.G.A. § 50-13-19 does not authorize an interlocutory injunction. *Georgia Pub. Serv. Comm'n v. Southern Bell*, 254 Ga. 244, 327 S.E.2d 726 (1985).

Appeal of adverse judgment by agency party. — The State Board of Pharmacy, being an agency which is also defined as a party, has the authority to appeal an adverse judgment of the superior court. *Georgia State Bd. of Pharmacy v. Bennett*, 126 Ga. App. 307, 190 S.E.2d 788 (1972).

Agency interpretation not entitled to judicial deference. — Decision of the department of community health (DCH) interpreting the phrase "last approved cost report" as used in the DCH's policies and procedures manual for purposes of computing an owner's reimbursement rate was not entitled to judicial deference because the phrase was not used in a statute, rule, or regulation, but rather in the manual, the terms of which had not undergone the scrutiny afforded a statute during the legislative process or the adoption process. *Pruitt Corp. v. Ga. Dep't of Cmty. Health*, 284 Ga. 158, 664 S.E.2d 223 (2008).

Consideration of argument not advanced in administrative proceeding. — Trial court did not err, in an O.C.G.A. § 50-13-19 review of an administrative decision regarding reimbursement of Medicaid and Peachcare program payments, in allowing a hospital to

advance constitutional arguments not urged in the administrative proceeding because, although the hospital changed the legal theory the hospital advanced, the trial court claim, that the retroactive application of an administrative rule was illegal, was also raised in the administrative proceeding. *Ga. Dep't of Cmty. Health v. Fulton DeKalb Hosp. Auth.*, 294 Ga. App. 431, 669 S.E.2d 233 (2008).

Failure to label order "judgment." — The order of the superior court affirming the administrative determination of the Department of Human Resources was not objectionable on the ground that the order was not labeled a judgment. *Nolen v. Department of Human Resources*, 151 Ga. App. 455, 260 S.E.2d 353 (1979), cert. denied, 444 U.S. 1092, 100 S. Ct. 1059, 62 L. Ed. 2d 782 (1980).

Error in affirming summary judgment. — Where there were genuine issues of material fact as to whether the plaintiff hospital provided emergency medical services to a child who received a bowel transplant without obtaining prior authorization from the defendant state department, the trial court's affirmance of the grant of summary determination to the department was an error of law. *Children's Hosp. v. Department of Medical Assistance*, 235 Ga. App. 697, 509 S.E.2d 725 (1998).

Decision under single permit rule, Ga. Comp. R. & Regs. § 290-9-7-.03(a). — Superior court properly affirmed an order denying a hospital's request to consolidate separate hospital permits of two of their facilities, as the hospital's argument that the 35-mile rule in the federal regulation, 42 C.F.R. § 413.65(e)(3), should be applied did not establish an issue of material fact, and the court owed deference to an agency's interpretation of a statute the agency was empowered to enforce. *Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res.*, 282 Ga. App. 302, 638 S.E.2d 447 (2006).

Municipalities had standing to appeal Georgia Public Service Commission's ruling. — Since a municipal association intervened in rate-making proceedings before the Georgia Public Service Commission (PSC), and certain municipalities joined the association's arguments in the trial court, the municipalities had standing to appeal the PSC's decision concerning a reallocation of fran-

chise fees paid to cities, even though the municipalities did not apply to intervene before the PSC under O.C.G.A. § 46-2-59. *Unified Gov't v. Ga. PSC*, 293 Ga. App. 786, 668 S.E.2d 296 (2008).

Cited in *Epstein v. Maddox*, 277 F. Supp. 613 (N.D. Ga. 1967); *Salerno v. Board of Dental Exmrs.*, 119 Ga. App. 743, 168 S.E.2d 875 (1969); *Burson v. Faith*, 227 Ga. 526, 181 S.E.2d 827 (1971); *Burson v. Webb*, 125 Ga. App. 824, 189 S.E.2d 120 (1972); *Department of Pub. Safety v. Byars*, 127 Ga. App. 190, 192 S.E.2d 926 (1972); *Freeman v. Department of Pub. Safety*, 127 Ga. App. 773, 195 S.E.2d 203 (1972); *Butts v. Department of Pub. Safety*, 128 Ga. App. 490, 197 S.E.2d 474 (1973); *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Clark v. Georgia Real Estate Comm'n*, 129 Ga. App. 741, 200 S.E.2d 926 (1973); *Graham v. Board of Exmrs.*, 133 Ga. App. 430, 211 S.E.2d 385 (1974); *Wall v. American Optometric Ass'n*, 379 F. Supp. 175 (N.D. Ga. 1974); *Gainesville-Hall County Economic Opportunity Org., Inc. v. Blackmon*, 233 Ga. 507, 212 S.E.2d 341 (1975); *Georgia Power Co. v. Allied Chem. Corp.*, 233 Ga. 558, 212 S.E.2d 628 (1975); *Tellis v. Saucier*, 133 Ga. App. 779, 213 S.E.2d 39 (1975); *Kirton v. Biggers*, 135 Ga. App. 416, 218 S.E.2d 113 (1975); *Hinson v. Georgia State Bd. of Dental Exmrs.*, 135 Ga. App. 488, 218 S.E.2d 162 (1975); *Pfeffer v. Department of Pub. Safety*, 136 Ga. App. 448, 221 S.E.2d 658 (1975); *Turner v. Harden*, 136 Ga. App. 842, 222 S.E.2d 621 (1975); *Allied Chem. Corp. v. Georgia Power Co.*, 236 Ga. 548, 224 S.E.2d 396 (1976); *Turner Communications Corp. v. Georgia DOT*, 139 Ga. App. 436, 228 S.E.2d 399 (1976); *Hawthorn Env'tl. Preservation Ass'n v. Coleman*, 417 F. Supp. 1091 (N.D. Ga. 1976); *Georgia Real Estate Comm'n v. Horne*, 141 Ga. App. 226, 233 S.E.2d 16 (1977); *Cofer v. Schultz*, 146 Ga. App. 771, 247 S.E.2d 586 (1978); *Smith v. State*, 147 Ga. App. 549, 249 S.E.2d 353 (1978); *Courts v. Economic Opportunity Auth. for Savannah—Chatham County Area, Inc.*, 451 F. Supp. 587 (S.D. Ga. 1978); *General Communications Serv., Inc. v. Georgia Pub. Serv. Comm'n*, 149 Ga. App. 466, 254 S.E.2d 710 (1979); *Georgia Real Estate Comm'n v. Burnette*, 243 Ga. 516, 255 S.E.2d 38 (1979); *Georgia Consumer Ctr., Inc. v. Georgia Power Co.*, 150 Ga. App. 511, 258

S.E.2d 250 (1979); *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n*, 152 Ga. App. 366, 262 S.E.2d 628 (1979); *Georgia State Bd. of Pharmacy v. Purvis*, 155 Ga. App. 597, 271 S.E.2d 870 (1980); *Bituminous Cas. Corp. v. United Servs. Auto. Ass'n*, 158 Ga. App. 739, 282 S.E.2d 198 (1981); *Georgia Dep't of Human Resources v. Montgomery*, 248 Ga. 465, 284 S.E.2d 263 (1981); *Village Ctrs., Inc. v. DeKalb County*, 248 Ga. 177, 281 S.E.2d 522 (1981); *Fluker v. Edwards*, 161 Ga. App. 418, 288 S.E.2d 684 (1982); *Geron v. Calibre Cos.*, 250 Ga. 213, 296 S.E.2d 602 (1982); *Hicks v. Georgia State Bd. of Pharmacy*, 553 F. Supp. 314 (N.D. Ga. 1982); *DOT v. Gibson*, 251 Ga. 66, 303 S.E.2d 19 (1983); *Loyd v. Georgia State Health Planning & Dev. Agency*, 168 Ga. App. 850, 310 S.E.2d 738 (1983); *North Fulton Community Hosp. v. State Health Planning & Dev. Agency*, 168 Ga. App. 801, 310 S.E.2d 764 (1983); *DOT v. Sapp Outdoor Adv. Co.*, 171 Ga. App. 228, 319 S.E.2d 87 (1984); *Kariuki v. DeKalb County*, 253 Ga. 713, 324 S.E.2d 450 (1985); *Johnson v. Ellis*, 174 Ga. App. 861, 331 S.E.2d 884 (1985); *Swafford v. Tanner*, 180 Ga. App. 468, 349 S.E.2d 498 (1986); *Ledbetter v. Foster*, 180 Ga. App. 696, 350 S.E.2d 31 (1986); *Coin Call, Inc. v. Southern Bell Tel. & Tel. Co.*, 636 F. Supp. 608 (N.D. Ga. 1986); *Carnes v. Charlock Invs. (USA), Inc.*, 258 Ga. 771, 373 S.E.2d 742 (1988); *Georgia Dep't of Natural Resources v. Union Timber Corp.*, 258 Ga. 873, 375 S.E.2d 856 (1989); *Earp v. Harris*, 191 Ga. App. 414, 382 S.E.2d 156 (1989); *Wills v. Composite State Bd. of Medical Exmrs.*, 259 Ga. 549, 384 S.E.2d 636 (1989); *First Union Nat'l Bank v. Independent Ins. Agents of Ga., Inc.*, 197 Ga. App. 227, 398 S.E.2d 254 (1990); *Board of Regents v. Cohen*, 197 Ga. App. 463, 398 S.E.2d 758 (1990); *Colquitt Elec. Membership Corp. v. City of Moultrie*, 197 Ga. App. 794, 399 S.E.2d 497 (1990); *Board of Natural Resources v. Walker County*, 200 Ga. App. 301, 407 S.E.2d 436 (1991); *Department of Medical Assistance v. Presbyterian Home, Inc.*, 200 Ga. App. 885, 409 S.E.2d 881 (1991); *Nix v. Long Mtn. Resources, Inc.*, 262 Ga. 506, 422 S.E.2d 195 (1992); *Ledbetter v. McDougald*, 209 Ga. App. 907, 434 S.E.2d 763 (1993); *Atlanta Gas Light Co. v. Georgia Pub. Serv. Comm'n*, 212 Ga. App. 575, 442 S.E.2d 860 (1994); *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D.

General Consideration (Cont'd)

Ga. 1994); Georgia Real Estate Comm'n v. Peavy, 229 Ga. App. 201, 493 S.E.2d 602 (1997); Georgia Pub. Serv. Comm'n v. Alltel Ga. Communications Corp., 230 Ga. App. 563, 497 S.E.2d 50 (1998); Reheis v. AZS Corp., 232 Ga. App. 852, 503 S.E.2d 36 (1998); Miles v. Smith, 239 Ga. App. 641, 521 S.E.2d 687 (1999); Georgia Pub. Serv. Comm'n v. ALLTEL Ga. Communications Corp., 244 Ga. App. 645, 536 S.E.2d 542 (2000); Board of Natural Resources v. Georgia Emission Testing Co., 249 Ga. App. 817, 548 S.E.2d 141 (2001); Ga. Dep't of Cmty. Health, Div. of Health Planning v. Gwinnett Hosp. Sys., 262 Ga. App. 879, 586 S.E.2d 762 (2003); Couch v. Parker, 280 Ga. 580, 630 S.E.2d 364 (2006); Prof'l Stds. Comm'n v. Peterson, 284 Ga. App. 424, 643 S.E.2d 899 (2007); Carolina Tobacco Co. v. Baker, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

Prerequisites to Judicial Review

"Aggrieved," as used in O.C.G.A. § 50-13-19(a), has been interpreted to mean that the person seeking to appeal must show that the person has an interest in the agency decision that has been specially and adversely affected thereby. Georgia Power Co. v. Campaign for a Prosperous Ga., 255 Ga. 253, 336 S.E.2d 790 (1985); Thebaut v. Georgia Bd. of Dentistry, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Provision for immediate review under O.C.G.A. § 50-13-19(a) is not applicable simply because an administrative ruling risks duplication of effort or expense; instead, there must be some suggestion that the administrative ruling, if incorrect, could not be remedied so as to cause irreparable harm. Schlachter v. Georgia State Bd. of Exmrs. of Psychologists, 215 Ga. App. 171, 450 S.E.2d 242 (1994).

Untimely appeal. — Because challengers who opposed a decision of the Coastal Marshlands Protection Committee granting a permit to a developer failed to comply with O.C.G.A. § 50-13-19(b), the trial court lacked jurisdiction to consider their untimely petition; nevertheless, because the committee and the developer filed timely petitions for review in the trial court, and then appealed to the court of appeals, the challengers' appeals were properly before

the court of appeals as cross-appeals filed pursuant to O.C.G.A. § 5-6-38(a). Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), *aff'd*, 284 Ga. 736, 670 S.E.2d 429 (2008).

Statute of limitations of subsection (b). —

The applicable 30-day statute of limitations of the Georgia Administrative Procedures Act, O.C.G.A. § 50-13-19(b), applied to defeat a suit contesting an administrative order that plaintiff State Department of Education reimburse parents of a disabled child for the child's placement under 20 U.S.C. § 1415(j), the "stay-put" provision of the Individuals with Disabilities Education Act, 20 U.S.C. § 1400 et seq. Ga. State Dep't of Educ. v. Derrick C., 314 F.3d 545 (11th Cir. 2002).

Compliance with O.C.G.A. § 50-13-19(f) required. — The superior court erred in reversing the suspension and reinstating a driver's license based on grounds and proffered evidence that the driver had not urged in the driver's original petition for judicial review and that were not covered by amendment to the original petition or prior application to the court to present additional evidence. Department of Pub. Safety v. Bell, 215 Ga. App. 301, 450 S.E.2d 320 (1994).

Determination of timeliness. — Georgia Civil Practice Act's three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid applicant's claim for benefits, pursuant to O.C.G.A. § 50-13-19; similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c), and, accordingly, the applicant's petition was properly denied as untimely. Gladowski v. Dep't of Family & Children Servs., 281 Ga. App. 299, 635 S.E.2d 886 (2006).

Matter held to be "contested case." —

The matter before the state revenue commissioner (the proposed termination by a liquor producer of four of its designated wholesalers) was a "contested case" within the meaning of the Administrative Procedure Act (APA), not involving the suspension or cancellation of licenses, and the trial court was thus correct in treating the review of the commissioner's order denying the proposal as a petition for judicial review

pursuant to the APA; and, there having been no application to appeal the decision of the superior court affirming the commissioner's order, as required by O.C.G.A. § 5-6-35, the motion to dismiss the appeal was granted. *Schieffelin & Co. v. Strickland*, 253 Ga. 385, 320 S.E.2d 358 (1984).

Matter was not a "contested case." — Trial court did not err in dismissing a retailer's petition for judicial review of the orders entered on an investigatory docket proceeding by the Georgia Public Service Commission, as it was not a contested case permitting review under O.C.G.A. § 50-13-19(a); further, this disposition did not prevent the retailer in pursuing a remedy in its rate case against the Georgia Power Company. *Federated Dep't Stores, Inc. v. Ga. PSC*, 278 Ga. App. 239, 628 S.E.2d 658 (2006).

Judicial review available after contested case proceedings. — Although the Georgia Board of Dentistry conducted an adjudicatory hearing, made findings of fact justifying discipline, and issued a letter of concern, the fact that the board could have issued a letter of concern without such procedures did not preclude judicial review since the sanction was issued as the result of contested case proceedings. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Party aggrieved by professional sanction. — A dentist was "aggrieved" by the Board of Dentistry's action in issuing a letter of concern and was therefore entitled to judicial review, in spite of the non-public nature of the letter, since the dentist had a professional interest in the board's decision that criticized the dentist's actions. *Thebaut v. Georgia Bd. of Dentistry*, 235 Ga. App. 194, 509 S.E.2d 125 (1998).

Aggrievement not shown. — Physicians and a sociologist had not shown aggrievement and thus lacked standing to seek judicial review of a decision of the Georgia composite state board of medical examiners in which the board refused to open a disciplinary investigation against physicians who had participated in executions; they had not shown how the board's refusal to act adversely affected their practice of medicine or threatened them with an economic injury, and they had not shown how any injuries were special to them, rather than common to all those physicians practicing

medicine in Georgia. *Zitrin v. Ga. Composite State Bd. of Med. Examiners*, 288 Ga. App. 295, 653 S.E.2d 758 (2007), cert. denied, 2008 Ga. LEXIS 285 (Ga. 2008).

First property owner's petition for judicial review of a decision by the Georgia Public Service Commission not to consider the propriety of the siting of an electrical substation near the first owner's residential property was denied because the first owner was not aggrieved under O.C.G.A. § 50-13-19(a) as no evidence was presented of any specific damage unique to the first owner's property. *Ga. PSC v. Turnage*, 284 Ga. 610, 669 S.E.2d 138 (2008).

Superior court must dismiss untimely appeal. — When an appeal of an adverse decision by an administrative agency is filed beyond the time allowed by law, the superior court has no jurisdiction to take any action other than to dismiss the case. *Miller v. Georgia Real Estate Comm'n*, 136 Ga. App. 718, 222 S.E.2d 183 (1975).

Finality of decision is unyielding prerequisite to judicial review. *Department of Human Resources v. Williams*, 130 Ga. App. 149, 202 S.E.2d 504 (1973).

Final order required for judicial review. — A trial court erred by affirming a decision of the Georgia Public Service Commission (PSC) in a ratemaking appeal filed by a gas distribution company and by denying the PSC's motion to dismiss the company's appeal; the trial court lacked jurisdiction to hear the company's petition for judicial review since one order appealed from was an interim order, and not a final order, and a voice note appealed from was not even a decision subject to review. *Atmos Energy Corp. v. Ga. PSC*, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Final order required for judicial review. — The trial court erred by affirming a decision of the Georgia Public Service Commission (PSC) in a ratemaking appeal filed by a gas distribution company and by denying the PSC's motion to dismiss the company's appeal; the trial court lacked jurisdiction to hear the company's petition for judicial review since one order appealed from was an interim order, and not a final order, and a voice note appealed from was not even a decision subject to review. *Atmos Energy Corp. v. Ga. PSC*, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

Prerequisites to Judicial Review (Cont'd)**Agency review of constitutional attacks. —**

The fact that one basis, or even the sole basis, of a respondent's complaint as to the hearing officer's initial decision is a constitutional attack does not eliminate the necessity for agency review as a prerequisite to judicial review. *Department of Pub. Safety v. Foreman*, 130 Ga. App. 71, 202 S.E.2d 196 (1973); *Georgia Bd. of Dentistry v. Pence*, 223 Ga. App. 603, 478 S.E.2d 437 (1996).

Constitutional attack on notice of appeal provision must first be made before agency, and then before the superior court. *Sparks v. Caldwell*, 244 Ga. 530, 261 S.E.2d 590 (1979).

Exhaustion of remedies necessary for judicial review. — No provision permits an aggrieved party to ignore prerequisite of agency review of an initial decision before petitioning the courts for relief. *Department of Pub. Safety v. MacLafferty*, 230 Ga. 22, 195 S.E.2d 748 (1973).

Exhaustion of all administrative remedies available within the Department of Public Safety is necessary for judicial review of a final decision in a contested case. *Department of Pub. Safety v. Foreman*, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Agency review is a necessary step in exhaustion of administrative remedies required by this section as a prerequisite to judicial review. *Department of Pub. Safety v. Foreman*, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Exhaustion of administrative remedies available within the agency is necessary for judicial review of a final decision in a contested case, and an aggrieved person who fails to seek review by the agency of an initial decision of a hearing officer fails to exhaust administrative remedies. *Carnes v. Crawford*, 246 Ga. 677, 272 S.E.2d 690 (1980).

Trial court properly denied the defendant's amended motion for a new trial holding that the administration of breath tests pursuant to Ga. Comp. R. & Regs. 92-3-.06(12)(b) did not violate the due process clause under both U.S. Const., amend. 5 or Ga. Const. 1983, Art. I, Sec. I, Para. I, given that: (1) the claim was raised for the first time in the new trial motion, and was thus untimely; (2) the defendant had an alternative remedy under the Georgia Ad-

ministrative Procedure Act, O.C.G.A. § 50-13-1 et seq., by filing an action for a declaratory judgment; (3) the defendant failed to show that the Division of Forensic Sciences (DFS) eliminated meaningful procedures for conducting breath tests when it promulgated the rule; and (4) the techniques and methods approved by DFS were sufficient to ensure fair and accurate testing. *Palmaka v. State*, 280 Ga. App. 761, 634 S.E.2d 883 (2006).

Exhaustion of administrative remedies not necessary in certain circumstances. — The mere existence of an unexhausted administrative remedy does not, standing alone, afford a defendant an absolute defense to a legal action. *AT&T Wireless PCS, Inc. v. Leafmore Forest Condominium Ass'n of Owners*, 235 Ga. App. 319, 509 S.E.2d 374 (1998).

Because the plaintiffs' challenge was to the authority of the Coastal Marshlands Protection Committee to issue a water bottom lease, plaintiffs were not required to exhaust administrative remedies under O.C.G.A. § 50-13-19 before filing a declaratory judgment action. *DBL, Inc. v. Carson*, 284 Ga. App. 898, 645 S.E.2d 56 (2007), cert. denied, 2007 Ga. LEXIS 566 (2007).

Agency's rules precluding hearing. — Public assistance recipients' claim against the commissioner of the Department of Human Resources for automatic grant adjustments was not barred by the recipients' failure to exhaust administrative remedies, since the department's rules precluded a hearing in cases of requests for automatic grant adjustments. *Wilson v. Ledbetter*, 260 Ga. 180, 390 S.E.2d 846 (1990).

Exhaustion of remedies as prerequisite for standing. — An aggrieved party has no standing to complain of a hearing officer's initial decision if the hearing officer does not exhaust administrative remedies by applying to the agency for review of the hearing officer's decision. *Department of Pub. Safety v. MacLafferty*, 230 Ga. 22, 195 S.E.2d 748 (1973).

Brief not required. — Although petitioners for judicial review of an administrative decision have the right to file briefs if the petitioners wish to do so under O.C.G.A. § 50-13-19(g), briefs are not required for superior court review of such decisions as a general matter. *Board of Regents of the*

Univ. Sys. of Ga./Albany State College v. Moore, 210 Ga. App. 623, 436 S.E.2d 789 (1993).

Standing established by requiring review of “contested case.” — The “standing to challenge” the administrative decision is what is intended to be established by the requirement in Ga. L. 1978, p. 1362, § 1 (see O.C.G.A. § 50-13-19) that the judicial review be of a “contested case”; and that is what is meant to be described by the language at Ga. L. 1975, p. 404, § 3 (see O.C.G.A. § 50-13-2). National Council on Comp. Ins. v. Caldwell, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Optional administrative process. — Liti-gant is not required to exhaust optional administrative process before seeking redress to courts. Motor Fin. Co. v. Harris, 150 Ga. App. 762, 258 S.E.2d 628 (1979).

Administrative review of conversion plan. — Where plaintiffs sought an interpretation of a plan of conversion which had been reviewed and approved by the Commissioner of Insurance, the parties were required to follow the administrative review process before seeking judicial review. Cerulean Cos. v. Tiller, 271 Ga. 65, 516 S.E.2d 522 (1999).

The trial court erred in accepting jurisdiction over a proceeding seeking an interpretation of a plan of conversion because the Commissioner of Insurance had reviewed the plan, approved the plan, and participated in the conversion process after approval, and the parties were required to follow the administrative review process before seeking judicial review. Blue Cross & Blue Shield of Ga., Inc. v. Deal, 244 Ga. App. 700, 536 S.E.2d 590 (2000).

Review of decertification. — Because a peace officer’s invocation of a right against self-incrimination could not shield that officer from an inquiry into the effect of that assertion on the officer’s job performance, and because the record supported an administrative decision that the officer’s refusal to cooperate in an investigation provided sufficient grounds for the Georgia Peace Officer Standards and Training Council to enter an order of decertification, the superior court erred in reversing an administrative law judge’s decision upholding the decertification. Ga. Peace Officers Stds. & Training Council v. Anderson, 290 Ga. App.

91, 658 S.E.2d 840 (2008).

Where risk of criminal prosecution involved. — Dentist’s action for declaratory and injunctive relief, seeking to prevent the board of dentistry from taking action against the dentist based on an opinion of the attorney general to the effect that certain procedures being performed by the dentist were not within the lawful scope of the practice of dentistry, was not barred by a failure to exhaust administrative remedies since the only way for the dentist to challenge the board’s position was to continue performing the procedures, thereby risking criminal prosecution for the felony offense of practicing medicine without a license and/or the initiation of administrative proceedings to revoke a dentist’s license to practice dentistry. Thomas v. Georgia Bd. of Dentistry, 197 Ga. App. 589, 398 S.E.2d 730 (1990).

O.C.G.A. § 50-13-19(f) establishes a two-prong test that must be met before a superior court can grant an application for leave to present additional evidence. The evidence sought to be introduced must be material and good reason for failure to present such evidence at the hearing must be shown. Golden v. Georgia Bureau of Investigation, 198 Ga. App. 115, 400 S.E.2d 668 (1990), cert. denied, 198 Ga. App. 897, 400 S.E.2d 668 (1991).

Jurisdiction over unnamed party served with petition. — The trial court erred in dismissing petition for failure to join a party to an appellate proceeding where such party was served with the petition (though not specifically named therein) and was therefore subject to the appellate court’s jurisdiction. Campaign for a Prosperous Georgia v. Georgia Power Co., 174 Ga. App. 263, 329 S.E.2d 570, aff’d, 255 Ga. 253, 336 S.E.2d 790 (1985).

Remand not needed if appellant abandons request for hearing in trial court. — Although a trial court erred in failing to hear oral argument and receive written briefs as requested by a power company, a remand was unnecessary because the company, by requesting that the appellate court consider the merits of its appeal of a Public Service Commission ruling, had essentially withdrawn or abandoned its briefing and hearing request. Ga. Power Co. v. Ga. PSC, 296 Ga. App. 556, 675 S.E.2d 294 (2009).

Scope of Judicial Review

Effect of remand on jurisdiction of reviewing court. — Reviewing superior court does not lose jurisdiction of case on remand to agency but it retains jurisdiction under subsection (f). *Howell v. Harden*, 231 Ga. 594, 203 S.E.2d 206 (1974).

Appellate court determines error of law by superior court. — The function of an appellate court is to determine whether the judge of the superior court has in judge's own final ruling committed an error of law. *DeWeese v. Georgia Real Estate Comm'n*, 136 Ga. App. 154, 220 S.E.2d 458 (1975).

Ripeness for judicial review. — Under O.C.G.A. § 50-13-19(h)(1), another superior court could consider a claim provided that it was preserved in the administrative proceedings below; thus, the claim for taking was ripe for judicial review at the time the administrative decision was appealed to the superior court. *GSW, Inc. v. Dep't of Natural Res.*, 254 Ga. App. 283, 562 S.E.2d 253 (2002).

Georgia Department of Community Health (DCH) erred by deeming recovery from a Medicaid claimant's estate appropriate under O.C.G.A. § 49-4-147.1(a) as the claimant was still alive. But nothing in O.C.G.A. § 50-13-19(h) authorized the trial court to bar DCH from ever pursuing the claimant's estate to recover Medicaid payments. *Ga. Dep't of Cmty. Health v. Medders*, 292 Ga. App. 439, 664 S.E.2d 832 (2008).

Challenge to validity of rule limited. — An action for declaratory judgment challenging the validity of an agency rule has no place once judicial review of an administrative decision is sought. *State Health Planning Agency v. Coastal Empire Rehabilitation Hosp.*, 261 Ga. 832, 412 S.E.2d 532 (1992).

Judicial review contemplated is appellate in nature and is not such a "pretrial, trial, or post trial procedure" as is provided for in Ga. L. 1966, p. 609, § 1 (see O.C.G.A. Ch. 11, T. 9). *Howell v. Harden*, 231 Ga. 594, 203 S.E.2d 206 (1974).

Rehearing and reconsideration distinguished from review. — A rehearing or reconsideration contemplates a second, a de novo, consideration of a cause or a retrial of the issues; while a review involves only the examination of the record by an appellate tribunal and consideration for the purpose

of correction. *Department of Pub. Safety v. MacLafferty*, 230 Ga. 22, 195 S.E.2d 748 (1973).

Review limited to record. — Absent an application to the court for leave to present additional evidence, appellate review of administrative decisions is confined to the record. *Quarterman v. Edwards*, 169 Ga. App. 300, 312 S.E.2d 643 (1983); *Department of Pub. Safety v. Ramey*, 215 Ga. App. 334, 450 S.E.2d 332 (1994).

Trial court did not err in affirming the state community health department's administrative decision to order the healthcare provider to cease operations until the healthcare provider obtained a certificate of need; with judicial review limited to the record, the healthcare provider did not show that the state community health department committed an error of law in issuing that order. *N. Atlanta Scan Assocs. v. Dep't of Cmty. Health*, 277 Ga. App. 583, 627 S.E.2d 67 (2006).

Appellate issue was limited to the propriety of the judgment. — Because a city could have challenged an agency consent order under O.C.G.A. §§ 12-2-2(c) and 50-13-19, but did not, the city's appeal of a judgment to enforce the consent order did not fall under O.C.G.A. § 5-6-35(a)(1), but arose from proceedings under O.C.G.A. § 12-5-189; since the city did not appeal the director's decision, the appellate issue was limited to the propriety of the judgment and not the correctness of the decision. *City of Rincon v. Couch*, 272 Ga. App. 411, 612 S.E.2d 596 (2005).

Clearly erroneous standard of review to be applied by the superior court prevents a de novo determination of evidentiary questions leaving only a determination of whether the facts found by the Administrative law judge were supported by any evidence. *Commissioner of Ins. v. Stryker*, 218 Ga. App. 716, 463 S.E.2d 163 (1995).

Standard of review. — Superior court erroneously conducted a de novo review of an ALJ's findings affirming a decision to suspend a driver's license, when, after being advised of the implied consent rights and of the consequences of refusing to submit to a state-administered breath test, the driver refused the test; as the correct standard of review was the "any evidence" test, because the hearing before the ALJ was conducted

pursuant to O.C.G.A. § 40-5-67.1, the appeal in the superior court was expressly excepted from O.C.G.A. § 40-5-66(a), and had to be conducted pursuant to § 40-5-67.1(h); moreover, the administered breath tests were not invalid merely because the officer gave the tests ten minutes apart, and the driver's failure to give an adequate sample could not be used to suspend the license. *Dozier v. Pierce*, 279 Ga. App. 464, 631 S.E.2d 379 (2006).

Trial court erred by failing to apply the proper standard of review to a decision of the Georgia Department of Community Health that terminated a claimant's medical assistance under a Medicaid waiver program available to qualifying children. The appellate court directed that the standard of review set forth in O.C.G.A. § 49-4-153(c) was applicable to the case, which called for application of the substantial evidence standard set forth in the Administrative Procedure Act, O.C.G.A. § 50-13-19. *Greene v. Dep't of Cmty. Health*, 293 Ga. App. 201, 666 S.E.2d 590 (2008).

Opportunity by agency to rule on objection as prerequisite. — Scope of judicial review is limited to those objections upon which the agency has had an opportunity to rule. *Department of Pub. Safety v. Foreman*, 130 Ga. App. 71, 202 S.E.2d 196 (1973).

Court correctly held that an intervenor's failure to raise the issue of allegedly improper ex parte communications before the Public Service Commission precluded the court's consideration of the issue. *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

Consideration of new evidence which goes to merits is not authorized during judicial review of an agency decision. *Caldwell v. Corbin*, 152 Ga. App. 153, 262 S.E.2d 516 (1979).

Service requirements met. — Trial court erred in substituting the court's judgment for that of the Georgia Department of Motor Vehicle Services and in setting aside a driver's license suspension as an officer complied with O.C.G.A. § 40-5-67.1(f)(1) by handing the driver a copy of the DPS Form 1205 when the driver was arrested. *Davis v. Brown*, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Civil Practice Act, (see O.C.G.A. Ch. 11, T. 9), is inapplicable to judicial review of ad-

ministrative agency decisions and motions for judgment on the pleadings and for summary judgment are "functionless" and are not appropriate in the superior court when that court is sitting as an appellate court under authority of the law. *Walker v. Harden*, 129 Ga. App. 782, 201 S.E.2d 483 (1973).

Judicial review provided is not governed by the provisions of the Civil Practice Act (see O.C.G.A. Ch. 11, T. 9). *Miller v. Georgia Real Estate Comm'n*, 136 Ga. App. 718, 222 S.E.2d 183 (1975).

Commissioner's powers not transferred to courts. — The standards for review set forth in subsection (h) of this section, properly applied, do not transfer to courts powers which under the Constitution belong to the Insurance Commissioner, nor do they usurp the commissioner's function to tell the commissioner how the commissioner should discharge the task and how the commissioner should protect the various interests which are deemed to be in the commissioner's, not the court's, keeping. *National Council on Comp. Ins. v. Caldwell*, 154 Ga. App. 528, 268 S.E.2d 793 (1980).

Sufficiency of Evidence

Appellate review for sufficiency of evidence. — Paragraphs (h)(1) through (6) of this section clearly authorize appellate review of the sufficiency of the evidence to support the agency's decision on questions of law. *Stevens v. Board of Regents*, 129 Ga. App. 347, 199 S.E.2d 620 (1973).

Reversal when no evidence to authorize trial court's findings. — Where the trial judge would be authorized to reverse the administrative agency pursuant to paragraph (h)(5) of this section, the appellate court is still bound by the evidence rule and can only reverse when there is no competent evidence to authorize the findings by the trial court. *Hicks v. Harden*, 133 Ga. App. 789, 213 S.E.2d 49 (1975).

"Any evidence" test. — Under paragraph (h)(5) of this section, "clearly erroneous" is the "any evidence rule," making findings of facts under this section binding on appeal unless wholly unsupported. *Georgia Dep't of Human Resources v. Holland*, 133 Ga. App. 616, 211 S.E.2d 635 (1974).

"Clearly erroneous" criterion for judicial review is the same as the "any evidence

Sufficiency of Evidence (Cont'd)

rule," which has long been binding on the appellate courts. *Georgia Real Estate Comm'n v. Hooks*, 139 Ga. App. 34, 227 S.E.2d 864 (1976).

Paragraph (h)(5) of this section precludes review if "any evidence" on the record substantiates the administrative agency's findings of fact and conclusions of law. *Flowers v. Georgia Real Estate Comm'n*, 141 Ga. App. 105, 232 S.E.2d 586 (1977).

"Clearly erroneous" criterion of paragraph (h)(5) of this section for judicial review is the same as the "any evidence rule." *DOT v. Rushing*, 143 Ga. App. 235, 237 S.E.2d 722 (1977).

"Clearly erroneous" language of paragraph (h)(5) of this section is the same as the "any evidence rule." *Hall v. Ault*, 143 Ga. App. 158, 237 S.E.2d 653 (1977), *aff'd*, 240 Ga. 585, 242 S.E.2d 101 (1978).

Application to rate increases. — Since the Public Service Commission granted a rate increase, but disallowed some of the utility company's costs in calculating the rate base for a fair increase because the commission concluded that some of the costs were the result of the company's imprudent management of the project, in that some were attributable to avoidable delay and some were caused by poor productivity of the construction work force, the agency's decision was within the agency's authority and was supported by the facts. *Georgia Power Co. v. Georgia Pub. Serv. Comm'n*, 196 Ga. App. 572, 396 S.E.2d 562 (1990).

"Any-evidence" standard was the appropriate standard of review for the superior court in reviewing the grant of a zoning variance by a county board of commissioners. *Emory Univ. v. Levitas*, 260 Ga. 894, 401 S.E.2d 691 (1991).

Under O.C.G.A. § 50-13-19(h)(5), the "any evidence" is the applicable touchstone and the presence of conflicting evidence is sufficient to satisfy that test. *Bowman v. Palmour*, 209 Ga. App. 270, 433 S.E.2d 380 (1993).

Presence of conflicting evidence, including dueling experts, is sufficient to satisfy the "any evidence" standard. *Sawyer v. Reheis*, 213 Ga. App. 727, 445 S.E.2d 837 (1994).

The trial court applied the correct "any evidence" standard of review to the admin-

istrative law judge's findings that the factual evidence of misrepresentation and concealment regarding a solid waste landfill permit application satisfied the clear and convincing evidence standard of O.C.G.A. § 12-8-23.1(a)(3)(B)(ii). *Bartram Envtl., Inc. v. Reheis*, 235 Ga. App. 204, 509 S.E.2d 114 (1998).

Judgment affirming a decision of the Department of Community Health based on the court's finding that there was evidence to support the judgment was error because, under O.C.G.A. § 50-13-19(h), a reviewing court was authorized to reverse or modify an agency decision if its application of the law to the facts was erroneous; a reviewing court was statutorily required to examine the soundness of the conclusions of law drawn from the findings of fact supported by any evidence. A determination that the findings of fact were supported by evidence did not end judicial review of an administrative decision. *Pruitt Corp. v. Ga. Dep't of Cmty. Health*, 284 Ga. 158, 664 S.E.2d 223 (2008).

Error of law found. — Georgia Department of Community Health made an error of law under O.C.G.A. § 50-13-19(h)(4) in testing whether a patient's hyperbaric oxygen therapy treatment was an accepted treatment that was medically necessary; in determining whether the treatment was reimbursable under Medicaid, the proper standard was, under 42 U.S.C. § 1396d(r)(5), whether the treatment was necessary "to correct or ameliorate a physical or mental defect or condition" regardless of whether the treatment was an accepted medical practice. *Ga. Dep't of Cmty. Health v. Freels*, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Trial court could have found that the Georgia Department of Motor Vehicle Services acted arbitrarily and capriciously and abused the department's discretion in applying the 10-day notice requirement as it could be inferred that the DPS Form 1205 served on a driver was seized by an officer during the driver's arrest; the driver was entitled to a hearing before an administrative law judge, despite the driver's failure to request a hearing within the 10-day time period. *Davis v. Brown*, 274 Ga. App. 48, 616 S.E.2d 826 (2005).

Expert testimony. — Superior court erred in the court's determination that the Geor-

gia Department of Community Health's experts were not qualified to testify about the efficacy of hyperbaric oxygen therapy, and in substituting the court's judgment for that of the department, which was entitled to rely on the department's experts' testimony. *Ga. Dep't of Cmty. Health v. Freels*, 258 Ga. App. 446, 576 S.E.2d 2 (2002).

Suspension of educator certificate justified. — Georgia Professional Standards Commission's suspension of a school superintendent's educator certificate for one year for violating Interim Ethics Rules 505-2-.03(1)(n) and (o), *Ga. Comp. R. & Regs. r. 505-2-.03(1)(n) and (o)*, was not clearly erroneous where: (1) the superintendent, believing that the Sheriff's Department's response to an elderly friend's report of suspicions of criminal activity was too slow, twice confronted a suspect, (2) the superintendent displayed a firearm to the suspect, (3) the superintendent instigated the confrontations on a public highway, on a school day, during school hours, (4) the superintendent was a role model to students, and (5) violence and the use of weapons by students was a significant public policy concern in the Georgia educational system. *Prof'l Stds. Comm'n v. Alberson*, 273 Ga. App. 1, 614 S.E.2d 132 (2005).

Suspension of student justified. — Trial court's order requiring a student's reinstatement as a student and a member of a university's varsity football team was reversed due to a lack of a justiciable controversy as: (1) *Ga. Const. 1983, Art. VIII, Sec. V, Para. II* clearly manifested an intent to entrust the schools to supervising authorities rather than the courts; (2) the student admitted that the suspension arose from a telephone call the student made to facilitate a drug sale and it was not clearly erroneous or arbitrary and capricious for lack of evidence; (3) the student suffered no deprivation of constitutional or statutory rights as there was no right to participate in extracurricular sports;

and (4) the suspension did not prejudice the student's substantial rights as the suspension was tailored to permit the student's eventual re-enrollment to complete the student's degree requirements, did not render the student ineligible for a scholarship, and was not a deprivation of major proportion warranting judicial intervention. *Bd. of Regents of the Univ. Sys. of Ga. v. Houston*, 282 Ga. App. 412, 638 S.E.2d 750 (2006).

Incomplete record. — Under *O.C.G.A. § 50-13-19(e)*, an administrative agency was responsible for transmitting the entire record of the agency proceeding to the trial court upon a petition seeking review of an agency decision; since an appellate court was unable to locate transcripts from a hearing before an administrative law judge, or a proceeding before the full agency board, the appellate court concluded that the trial court improperly reviewed a psychologist's petition for review of the board's decision without the entire record, and the trial court's judgment affirming the agency decision was vacated and the case was remanded. *Farrar v. Ga. Bd. of Examiners of Psychologists*, 280 Ga. App. 455, 634 S.E.2d 79 (2006).

Evidence sufficient. — An electric membership corporation alleged that an electric utility company, a consumer's designated territorial supplier, falsely told the consumer that the consumer did not qualify as a large load consumer under *O.C.G.A. § 46-3-8(a)* and thus had to select the utility as the consumer's provider, and that the consumer's request-for-services form was void because the form was based on this misrepresentation. As the hearing officer's findings—that the allegations of misrepresentation were untenable and that the consumer and utility had a binding contract—were supported by the evidence, the findings were upheld. *Jackson Elec. Mbrshp. Corp. v. Ga. PSC*, 294 Ga. App. 253, 668 S.E.2d 867 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 *Am. Jur. 2d*, Administrative Law, § 402 et seq.

Am. Jur. Pleading and Practice Forms. — 1A *Am. Jur. Pleading and Practice Forms*, Administrative Law, § 185 et seq.

C.J.S. — 73A *C.J.S.*, Public Administrative Law and Procedure, § 313 et seq.

U.L.A. — Model State Administrative Procedure Act (U.L.A.) § 5-101 et seq.

ALR. — Exhaustion of administrative rem-

edies as condition of resort to court in respect of right claimed under social security or old age acts, 130 ALR 882.

Approval of or refusal to approve bond of public officer as subject of judicial review, 134 ALR 1359.

Malicious prosecution predicated upon prosecution, institution, or instigation of administrative proceedings, 143 ALR 157.

Propriety of ruling by which ultimate disposition of issue between private parties is made to depend upon correction by administrative authority of antecedent defective regulation, 153 ALR 1026.

Stay, pending review, of judgment or order revoking or suspending a professional, trade, or occupational license, 166 ALR 575.

Validity of administrative proceedings conducted on Sunday or holiday, 26 ALR2d 996.

Exhaustion of grievance procedures or of remedies provided in collective bargaining agreement as condition of employee's resort to civil courts for assertedly wrongful discharge, 72 ALR2d 1439.

Revocation of teacher's certificate for moral unfitness, 97 ALR2d 827.

Failure to pursue or exhaust remedies under union contract as affecting employee's right of state civil action for retaliatory discharge, 32 ALR4th 350.

Wrongful discharge based on public policy derived from professional ethics codes, 52 ALR5th 405.

50-13-20. Review of final judgment.

An aggrieved party may obtain a review of any final judgment of the superior court under this chapter by the Court of Appeals or the Supreme Court, as provided by law. In contested cases involving a license to practice medicine or a license to practice dentistry in this state, the filing of an application for appeal or a notice of appeal shall not by itself stay enforcement of the agency decision. In such cases, the superior court which considered the petition for judicial review or the Court of Appeals or the Supreme Court may order a stay only if such court makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay. (Ga. L. 1964, p. 338, § 21; Ga. L. 1988, p. 388, § 1.)

Cross references. — Procedure for appeals from decisions of superior courts reviewing decisions of state and local administrative agencies, § 5-6-35.

Law reviews. — For survey article on appellate practice and procedure, see 60 Mercer L. Rev. 21 (2008).

JUDICIAL DECISIONS

Interlocutory appeals unavailable. — Under O.C.G.A. § 50-13-20, the Court of Appeals has jurisdiction only of final judgment of a reviewing court and O.C.G.A. § 5-6-34, providing for interlocutory appeal upon certificate of immediate review, does not govern. *Hardison v. Booth*, 160 Ga. App. 69, 286 S.E.2d 60 (1981).

Denial of motion to dismiss for lack of jurisdiction was not "final judgment" within meaning of this section and was, therefore, not appealable. *Georgia State Bd. of Pharmacy v. Purvis*, 155 Ga. App. 597, 271 S.E.2d 870 (1980).

Remand order is not appealable final

judgment. *Georgia Consumer Ctr., Inc. v. Georgia Power Co.*, 150 Ga. App. 511, 258 S.E.2d 250 (1979).

A superior court order remanding a case back to the administrative tribunal does not constitute a final judgment. *State Health Planning Review Bd. v. Piedmont Hosp.*, 173 Ga. App. 450, 326 S.E.2d 814 (1985).

Rate case remand order considered final judgment. — Trial court's remand order to the Public Service Commission after making a determination that the matter should be treated as a rate case, rather than a mere accounting matter, was a final order or judgment subject to direct appeal. *Georgia Pub-*

lic Serv. Comm'n v. Campaign for a Prosperous Ga., 229 Ga. App. 28, 492 S.E.2d 916 (1997).

Remand returning case for consideration of new evidence was functionally a final order. — ALJ order remanding a case to the Coastal Marshlands Protection Committee was functionally and substantively an appealable final judgment; the remand did more than merely return the case for consideration of additional issues and evidence, but was ordered on the basis that the committee erred as a matter of law in the committee's construction of a statute. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007), *aff'd*, 284 Ga. 736, 670 S.E.2d 429 (2008).

Agency party has authority to appeal judgment of court. — The State Board of Pharmacy, being an agency which is also defined as a party, has the authority to appeal an adverse judgment of the superior court. *Georgia State Bd. of Pharmacy v. Bennett*, 126 Ga. App. 307, 190 S.E.2d 788 (1972).

Cited in *Howell v. Harden*, 129 Ga. App. 200, 198 S.E.2d 890 (1973); *Howell v. Harden*, 231 Ga. 594, 203 S.E.2d 206 (1974); *Graham v. Board of Exmrs.*, 133 Ga. App. 430, 211 S.E.2d 385 (1974); *Georgia Pub. Serv. Comm'n v. Southern Bell*, 254 Ga. 244, 327 S.E.2d 726 (1985); *Johnsen v. Collins*, 875 F. Supp. 1571 (S.D. Ga. 1994); *Atmos Energy Corp. v. Ga. PSC*, 290 Ga. App. 243, 659 S.E.2d 385 (2008); *Atmos Energy Corp. v. Ga. PSC*, 290 Ga. App. 243, 659 S.E.2d 385 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, *Administrative Law*, § 639 et seq.

C.J.S. — 73A C.J.S., *Public Administrative Law and Procedure*, § 467 et seq.

U.L.A. — *Model State Administrative Procedure Act* (U.L.A.) § 5-101 et seq.

ALR. — *Approval of or refusal to approve bond of public officer as subject of judicial review*, 134 ALR 1359.

50-13-20.1. Judicial review of final decision in contested case issued by administrative law judge.

A petition for judicial review of a final decision in a contested case issued by an administrative law judge pursuant to subsection (e) of Code Section 50-13-41 shall be subject to judicial review in the same manner as provided in Code Section 50-13-19 except that the procedure and standard of judicial review specifically provided for an agency shall be applied and shall not be affected, altered, or changed by Article 2 of this chapter. (Code 1981, § 50-13-20.1, enacted by Ga. L. 1994, p. 1856, § 4.)

Editor's notes. — Ga. L. 1994, p. 1856, § 5, not codified by the General Assembly, provides: "This Act shall become effective July 1, 1994, for purposes of commencing transfer of positions, independent hearing officers, employees, and equipment and for general administrative purposes. The Office of State Administrative Hearings may commence the performance of its duties on and after July 1, 1994, and shall assume full responsibility for the performance of its duties on and after April 1, 1995. The Office

of State Administrative Hearings shall, where necessary for any class of hearings, promulgate rules and regulations in order to comply with all federal and state procedural requirements. During the period between July 1, 1994, and April 1, 1995, covered agencies may continue to conduct covered administrative hearings as provided by prior law; but on and after April 1, 1995, all such hearings in new and, where practical, in pending proceedings shall be conducted as provided in this Act."

50-13-21. Compliance with filing and hearing requirements by Safety Fire Commissioner and Commissioner of Insurance.

As to such regulations, standards, and plans as are required by law to be filed and kept on file with the office of the Secretary of State, the Commissioner of Insurance, when performing the duties as Safety Fire Commissioner, may comply with the filing requirements of this chapter by filing with the office of the Secretary of State merely the name and designation of such regulations, standards, and plans, provided the regulations, standards, and plans are kept on file in the office of the Commissioner of Insurance by the titles otherwise applicable under this chapter and the regulations, standards, and plans are open for public examination and copying. The Commissioner of Insurance, when performing the duties as Safety Fire Commissioner, may also satisfy the procedure for conduct of hearings on contested cases and rule making required under this chapter by following Chapter 2 of Title 33. The Commissioner of Insurance, when performing the duties as Commissioner of Insurance, may satisfy the procedure for conduct of hearings on contested cases required under this chapter by following Chapter 2 of Title 33. When the Commissioner of Insurance is performing rule-making duties as Commissioner of Insurance, he shall satisfy the procedures required under this chapter and under Chapter 2 of Title 33. In the event of any conflicts between rule-making procedures of this chapter and Chapter 2 of Title 33 as it respects duties of the Commissioner of Insurance, this chapter shall govern. (Ga. L. 1967, p. 618, § 1; Ga. L. 1986, p. 855, § 28; Ga. L. 1989, p. 681, § 1.)

Administrative rules and regulations. — Rules and regulations for installation; inspection; recharging, repairing, servicing, and testing of portable fire extinguishers of

fire suppression systems, Official Compilation of the Rules and Regulations of the State of Georgia, Comptroller General, Chapter 120-3-23.

JUDICIAL DECISIONS

Names and designations, but not contents, of rules are filed. — In accordance with this section, the contents of these rules are not filed with or published by the Secretary of State in the Official Compilation of the Rules and Regulations of the State of Georgia, but the names and designations of the

rules are filed. These regulations are on file in the office of the Comptroller General and open for public examination and copying. *Virginia Mut. Ins. Co. v. Hayes*, 150 Ga. App. 756, 258 S.E.2d 617 (1979).

Cited in *Bradford v. Davidson*, 150 Ga. App. 625, 258 S.E.2d 235 (1979).

OPINIONS OF THE ATTORNEY GENERAL

Alternate rule-making procedures. — The Insurance Department may utilize rule-making procedures of O.C.G.A. Ch. 2,

T. 33 in lieu of rule-making procedures outlined in O.C.G.A. § 50-13-21. 1982 Op. Att'y Gen. No. 82-10.

50-13-22. Construction of chapter.

Nothing in this chapter shall be held to diminish the constitutional rights of any person, to limit or repeal additional requirements imposed by statute or otherwise recognized by law, to diminish any delegation of authority to any agency, nor to create any substantive rights; but this chapter shall be procedural. Except as otherwise required by law, all requirements or privileges relating to evidence or procedure shall apply equally to agencies and persons. Every agency is granted all authority necessary to comply with the requirements of this chapter through the issuance of rules or otherwise. (Ga. L. 1964, p. 338, § 22; Ga. L. 1982, p. 3, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was substituted for a semicolon following “law” in the second sentence.

JUDICIAL DECISIONS

Cited in Pope v. Cokinos, 231 Ga. 79, 200 S.E.2d 275 (1973); Georgia Real Estate Comm’n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977).

50-13-23. Determining date when documents received by or filed with agencies.

Notwithstanding any provision of law to the contrary, any document required by law, rule, or regulation to be received by or filed with any agency pursuant to the requirements of this chapter shall be deemed to be received by or filed with such agency on the earlier of: (1) the date such document is actually received by such agency; (2) the official postmark date such document was mailed, properly addressed with postage prepaid, by registered or certified mail; or (3) the date on which such document was delivered to a commercial delivery company for statutory overnight delivery as provided in Code Section 9-10-12 as evidenced by the receipt provided by the commercial delivery company. (Code 1981, § 50-13-23, enacted by Ga. L. 1991, p. 1301, § 1; Ga. L. 2000, p. 1589, § 14.)

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Timeliness of mailing. — Under O.C.G.A. § 50-13-23, the date on which a document is postmarked, rather than the date on which it is mailed, is determinative of its timeliness; thus, in deciding whether the mailing of a request for a hearing was made within the time limit of O.C.G.A. § 40-5-67.1(g), the trial court erred in determining that the date on which the document was mailed was controlling. Department of Pub. Safety v. Ramey, 215 Ga. App. 334, 450 S.E.2d 332 (1994). Georgia Civil Practice Act’s three-day rule under O.C.G.A. § 9-11-6(e) was inapplicable to a determination of timeliness with respect to a petition for judicial review of a Medicaid

applicant's claim for benefits, pursuant to O.C.G.A. § 50-13-19. Similarly, the certified mail rule under O.C.G.A. § 50-13-23 was expressly deemed inapplicable pursuant to O.C.G.A. § 49-4-153(c), and, accordingly,

the applicant's petition was properly denied as untimely. *Gladowski v. Dep't of Family & Children Servs.*, 281 Ga. App. 299, 635 S.E.2d 886 (2006).

ARTICLE 2

OFFICE OF STATE ADMINISTRATIVE HEARINGS

Administrative rules and regulations. — Official Compilation of the Rules and Regulations of the State of Georgia, Title 616.
The Office of State Administrative Hearings,

50-13-40. Office created; chief state administrative law judge.

(a) There is created within the executive branch of state government the Office of State Administrative Hearings. The office shall be independent of state administrative agencies and shall be responsible for impartial administration of administrative hearings in accordance with this article. The office shall be assigned for administrative purposes only, as that term is defined in Code Section 50-4-3, to the Department of Administrative Services.

(b) The head of the office shall be the chief state administrative law judge who shall be appointed by the Governor, shall serve a term of six years, shall be eligible for reappointment, and may be removed by the Governor for cause. The chief state administrative law judge shall have been admitted to the practice of law in this state for a period of at least five years. The chief state administrative law judge shall be in the unclassified service of the State Personnel Administration and shall receive a salary to be determined by the Governor. All successors shall be appointed in the same manner as the original appointment and vacancies in office shall be filled in the same manner for the remainder of the unexpired term.

(c) The chief state administrative law judge shall promulgate rules and regulations and establish procedures to carry out the provisions of this article.

(d) The chief state administrative law judge shall have the power to employ clerical personnel and court reporters necessary to assist in the performance of his or her duties.

(e)(1) The chief state administrative law judge shall have the power to employ full-time assistant administrative law judges who shall exercise the powers conferred upon the chief state administrative law judge in all administrative cases assigned to them. Each assistant administrative law judge shall have been admitted to the practice of law in this state for a period of at least three years. The chief state administrative law judge may establish different levels of administrative law judge positions and the compensation for such positions shall be determined by the chief state administrative law judge.

(2) The chief state administrative law judge may appoint a special assistant administrative law judge on a temporary or case basis as may be necessary for the proper performance of the duties of the office, pursuant to a fee schedule established in advance by the chief state administrative law judge. A special assistant administrative law judge shall have the same qualifications and authority as a full-time assistant administrative law judge.

(3) The chief state administrative law judge may designate in writing a qualified full-time employee of an agency other than an agency directly connected with the proceeding to conduct a specified hearing, but such appointment shall only be with the prior consent of the employee's agency. Such employee shall then serve as a special designated assistant administrative law judge for the purposes of the specific hearing and shall not be entitled to any additional pay for this service.

(4) When the character of the hearing requires utilization of a hearing officer with special skill and technical expertise in the field, the chief state administrative law judge may so certify in writing and appoint as a special lay assistant administrative law judge a person who is not a member of the bar of this state or otherwise not qualified under this Code section. Such appointment shall specify in writing the reasons such special skill is required and the qualifications of the appointed individual.

(5) The chief state administrative law judge may designate a class of hearings for which individuals with the necessary skill and training need not meet the qualifications of paragraphs (1) through (4) of this subsection. These full-time associate administrative law judges shall exercise the powers conferred upon the chief state administrative judge in the class of administrative cases assigned to them. The chief state administrative law judge shall determine the compensation for such positions.

(f) The chief state administrative law judge and any administrative law judge employed on a full-time basis: (1) shall not otherwise engage in the practice of law; and (2) shall not, except in the performance of his or her duties in a contested case, render legal advice or assistance to any state board, bureau, commission, department, agency, or officer. (Code 1981, § 50-13-40, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" in the third sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Current hearing officers utilized by Department of Transportation may continue to hold hearings until April 1, 1995. 1994 Op. Att'y Gen. No. 94-21.

50-13-41. Hearing procedures; powers of administrative law judge; issuance of decision; review.

(a)(1) Whenever a state agency authorized by law to determine contested cases initiates or receives a request for a hearing in a contested case which is not presided over by the agency head or board or body which is the ultimate decision maker, the hearing shall be conducted by the Office of State Administrative Hearings, and such hearings shall be conducted in accordance with the provisions of this chapter and the rules and regulations promulgated under this article.

(2) An administrative law judge shall have the power to do all things specified in paragraph (6) of subsection (a) of Code Section 50-13-13.

(b) An administrative law judge shall have all the powers of the referring agency with respect to a contested case. Subpoenas issued by an administrative law judge shall be enforced in the manner set forth in paragraph (7) of subsection (a) of Code Section 50-13-13. Nothing in this article shall affect, alter, or change the ability of the parties to reach informal disposition of a contested case in accordance with paragraph (4) of subsection (a) of Code Section 50-13-13.

(c) Within 30 days after the close of the record, an administrative law judge shall issue a decision to all parties in the case except when it is determined that the complexity of the issues and the length of the record require an extension of this period and an order is issued by an administrative law judge so providing. Every decision of an administrative law judge shall contain findings of fact, conclusions of law, and a recommended disposition of the case.

(d) Except as otherwise provided in this article, in all cases every decision of an administrative law judge shall be treated as an initial decision as set forth in subsection (a) of Code Section 50-13-17, including, but not limited to, the taking of additional testimony or remanding the case to the administrative law judge for such purpose. On review, the reviewing agency shall consider the whole record or such portions of it as may be cited by the parties. In reviewing initial decisions by the Office of State Administrative Hearings, the reviewing agency shall give due regard to the administrative law judge's opportunity to observe witnesses. If the reviewing agency rejects or modifies a proposed finding of fact or a proposed decision, it shall give reasons for doing so in writing in the form of findings of fact and conclusions of law.

(e)(1) A reviewing agency shall have a period of 30 days following the entry of the decision of the administrative law judge in which to reject or modify such decision. If a reviewing agency fails to reject or modify the decision of the administrative law judge within such 30 day period, then the decision of the administrative law judge shall stand affirmed by the reviewing agency by operation of law.

(2) A reviewing agency may prior to the expiration of the review period provided for in paragraph (1) of this subsection extend such review period by order of the reviewing agency in any case wherein unusual and compelling circumstances render it impracticable for the reviewing agency to complete its review within such period. Any such order shall recite with particularity the circumstances which render it impracticable for the reviewing agency to complete its review within such review period. Any such extension by the reviewing agency shall be for a period of time not to exceed 30 days. Prior to the expiration of the extended review period, the review period may be further extended by further order of the reviewing agency for one additional period not to exceed 30 days if unusual and compelling circumstances render it impracticable to complete the review within the extended review period. Such further order further extending the review period shall likewise recite with particularity the circumstances which render it impracticable for the reviewing agency to complete its review within the review period as previously extended. If a reviewing agency fails to reject or modify the decision of the administrative law judge within the extended review period, then the decision of the administrative law judge shall stand affirmed by the reviewing agency by operation of law.

(3) An agency may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further agency action and without expiration of the 30 day review period otherwise provided for in this subsection. (Code 1981, § 50-13-41, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1995, p. 1072, § 6; Ga. L. 1998, p. 750, § 10.)

Editor's notes. — Ga. L. 1998, p. 750, § 11, not codified by the General Assembly, provides that all cases pending before the

Professional Practices Commission on June 30, 1998, shall be transferred to the Professional Standards Commission.

JUDICIAL DECISIONS

Reasons for State Personnel Board's decision. — State Personnel Board was authorized to reverse an administrative law judge's (ALJ) determination upholding a school instructor's dismissal as O.C.G.A. § 45-20-9(e)(2) comprehensively and specifically regulated the board's authority in its review of an ALJ's initial decision following a dismissal or adverse personnel action hearing; while O.C.G.A. § 50-13-41(d) applied generally to hearings conducted by the Office of State Administrative Hearings, the board did not comprehensively express the whole law on the subject of the board's review of an ALJ's initial decision. Ga. Dep't of

of Educ. v. Niemeier, 274 Ga. App. 111, 616 S.E.2d 861 (2005).

State Personnel Board's final decision reversing an administrative law judge's (ALJ) determination upholding a school instructor's dismissal met the requirement of O.C.G.A. § 50-13-41(d) as the board's additional findings cited the testimony of several other school staff members, a stipulated expert, and the Professional Standards Commission report was included as an exhibit in the record; based on its findings of fact, the board concluded that the evidence failed to prove the charges against the instructor by a preponderance of the evidence. Ga. Dep't of

Educ. v. Niemeier, 274 Ga. App. 111, 616 S.E.2d 861 (2005).

When the State Personnel Board, in reviewing the decision of an administrative law judge (ALJ) decreasing the sanction imposed on a state employee from dismissal to a 30-day suspension, reimposed the dismissal, it was error for a trial court to find that the board's decision was not supported by a sufficient rationale; the board had properly adopted findings and conclusions of the ALJ which were consistent with the board's own decision and then explained that the ALJ's recommended sanction was too lenient for the proved misconduct, as the misconduct was so severe as to warrant dismissal, so the board's decision was adequately supported under O.C.G.A. § 50-13-41(d). *Ga. Dep't of Natural Res. v. Willis*, 274 Ga. App. 801, 619 S.E.2d 335 (2005).

Decision under single permit rule, Ga. Comp. R. & Regs. § 290-9-7-.03(a). — Superior court properly affirmed an order denying a hospital's request to consolidate separate hospital permits of two of their facilities, as the hospital's argument that the 35-mile rule in the federal regulation, 42 C.F.R. § 413.65(e)(3), should be applied did not establish an issue of material fact, and the court owed deference to an agency's interpretation of a statute the agency was empowered to enforce. *Piedmont Healthcare, Inc. v. Ga. Dep't of Human Res.*, 282 Ga. App. 302, 638 S.E.2d 447 (2006).

Exhaustion under Individuals with Disabilities Act and Georgia statute. — In a case in which the federal claims of a minor and the minor's father related to the minor's education and were subject to the Individuals with Disabilities Education Act's exhaustion requirement, a school board, a superintendent, and 10 employees were entitled to dismissal under Fed. R. Civ. P. 12(b)(6) since the minor and the minor's father had not exhausted their administrative remedies as required by 20 U.S.C. § 1415(f)(1)(A) and O.C.G.A. § 50-13-41(a)(1). *Pope v. Cherokee County Bd. of Educ.*, 562 F. Supp. 2d 1371 (N.D. Ga. 2006).

Agency not bound by administrative law judge's findings of fact. — Commissioner of the Georgia Department of Revenue was not bound by an administrative law judge's (ALJ's) finding of fact that a taxpayer had not elected tax treatment of the sale of all its stock under 26 U.S.C.S. § 338(h)(10) (§ 338). As the Commissioner's finding that the taxpayer had made a § 338 election was supported by some evidence, the trial court erred by reinstating the ALJ's ruling. *Ga. Dep't of Revenue v. Trawick Constr. Co.*, 296 Ga. App. 275, 674 S.E.2d 350 (2009).

Cited in *M.T.V. v. Dekalb County Sch. Dist.*, 446 F.3d 1153 (11th Cir. 2006); *Draper v. Atlanta Indep. Sch. Sys.*, 480 F. Supp. 2d 1331 (N.D. Ga. 2007); *Carolina Tobacco Co. v. Baker*, 295 Ga. App. 115, 670 S.E.2d 811 (2008).

OPINIONS OF THE ATTORNEY GENERAL

Hearings by Office of State Administrative Hearings. — Unless otherwise exempted or excluded, contested cases not presided over by the agency head or board

or body which is the ultimate decision maker are to be conducted by the Office of State Administrative Hearings. 1995 Op. Att'y Gen. No. 95-5.

50-13-42. Applicability of article.

(a) In addition to those agencies expressly exempted from the operation of this chapter under paragraph (1) of Code Section 50-13-2, this article shall not apply to the Commissioner of Agriculture, the Public Service Commission, the Certificate of Need Appeal Panel, or the Department of Community Health, unless specifically provided otherwise for certain programs or in relation to specific laws, or to the Department of Labor with respect to unemployment insurance benefit hearings conducted under the authority of Chapter 8 of Title 34. Such exclusion does not prohibit such

office or agencies from contracting with the Office of State Administrative Hearings on a case-by-case basis.

(b) This article shall apply to hearings conducted pursuant to Code Sections 45-20-8 and 45-20-9. The State Personnel Board may provide by rule that proposed decisions in all or in specified classes of cases before the Office of State Administrative Hearings will become final without further action by the board and without expiration of the 30 day review period otherwise provided for in subsection (e) of Code Section 50-13-41. (Code 1981, § 50-13-42, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 5; Ga. L. 1999, p. 296, § 22; Ga. L. 2004, p. 598, § 3; Ga. L. 2009, p. 453, § 1-57/HB 228.)

The 2009 amendment, effective July 1, 2009, in the first sentence of subsection (a), substituted “the Certificate of Need Appeal Panel” for “the Health Planning Review

Board”, and inserted “, unless specifically provided otherwise for certain programs or in relation to specific laws,”.

50-13-43. Agencies to cooperate with chief state administrative law judge; Office of State Administrative Hearings to comply with federal law; rules and regulations.

All agencies shall cooperate with the chief state administrative law judge in the discharge of his or her duties. The Office of State Administrative Hearings shall comply with all applicable federal statutes, regulations, and guidelines, including those related to time frames for hearings, release of decisions, and other procedural requirements. The Office of State Administrative Hearings shall promulgate, when necessary for any class of hearings, specific rules and regulations in order to ensure compliance with federal requirements and receipt and retention of federal funding, tax credits, and grants. (Code 1981, § 50-13-43, enacted by Ga. L. 1994, p. 1856, § 3.)

50-13-44. Administrative transfer of individuals to Office of State Administrative Hearings; approval of chief state administrative law judge; funding of transferred positions; transferred employees status.

(a) Any full-time hearing officer or equivalent position, used exclusively or principally to conduct or preside over hearings for a covered agency immediately prior to July 1, 1994, shall be administratively transferred to the Office of State Administrative Hearings, if such employee qualifies under Code Section 50-13-40. Any person serving immediately prior to July 1, 1994, as an independent hearing officer or equivalent under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994, and shall continue as a special assistant administrative law judge. All full-time staff of covered agencies who have exclusively or principally served as support staff for

administrative hearings shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1994. All equipment or other tangible property in possession of covered agencies which is used or held exclusively or principally by personnel transferred under this Code section shall be transferred to the Office of State Administrative Hearings as of July 1, 1994.

(b) All such transfers shall be subject to the approval of the chief state administrative law judge and such personnel or property shall not be transferred if the chief state administrative law judge determines that the hearing officer, staff, equipment, or property should remain with the transferring agency.

(c) Funding for functions and positions transferred to the Office of State Administrative Hearings under this article shall be transferred as provided for in Code Section 45-12-90. The employees of the Office of State Administrative Hearings shall be in the classified service of the State Personnel Administration; provided, however, that the chief administrative law judge may place positions in the unclassified service as authorized in Article 1 of Chapter 20 of Title 45 and may also place an additional ten assistant administrative law judges in the unclassified service.

(d) The chief state administrative law judge shall assess agencies the cost of services rendered to them in the conduct of hearings.

(e)(1) Any full-time hearing officer of the State Personnel Board used exclusively or principally to conduct or preside over hearings for such board immediately prior to July 1, 1997, shall be administratively transferred to the Office of State Administrative Hearings if such employee qualifies under Code Section 50-13-40. Any person serving immediately prior to July 1, 1997, as an independent hearing officer under contract or written order of appointment shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997, and shall continue as a special assistant administrative law judge. All full-time staff of the State Personnel Board who have exclusively or principally served as support staff for administrative hearings conducted by such hearing officers shall be administratively transferred to the Office of State Administrative Hearings as of July 1, 1997. All equipment or other tangible property in possession of the State Personnel Board which is used or held exclusively or principally by personnel transferred under this subsection shall be transferred to the Office of State Administrative Hearings as of July 1, 1997.

(2) Funding for functions and positions transferred to the Office of State Administrative Hearings under this subsection shall be transferred as provided for in Code Section 45-12-90. (Code 1981, § 50-13-44, enacted by Ga. L. 1994, p. 1856, § 3; Ga. L. 1997, p. 844, § 6; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" near the beginning of the second sentence of subsection (c).

CHAPTER 14

OPEN AND PUBLIC MEETINGS

Sec.		Sec.	
50-14-1.	Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences.	50-14-2.	Certain privileges not repealed.
		50-14-3.	Excluded proceedings.
		50-14-4.	Procedure when meeting closed.
		50-14-5.	Jurisdiction to enforce chapter.
		50-14-6.	Violation of chapter; penalty.

Editor's notes. — Ga. L. 1988, p. 235, § 1, effective July 1, 1988, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 50-14-1 through 50-14-4 and was based on Ga. L. 1972, p. 575, §§ 1-3; Ga. L. 1978, p. 1364, § 1; Ga. L. 1980, p. 595, § 1; Ga. L. 1980, p. 1254, § 1; Ga. L. 1981, Ex. Sess., p. 8 (Code enactment Act); and Ga. L. 1982, p. 1810, § 1.

Law reviews. — For article, "The Amended Open Meetings Law: New Requirements for Publicly Funded Corporations As Well As Governmental Agencies," see 25 Ga. St. B.J. 78 (1988). For annual

survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000). For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

For note, "Opening the Doors to Access: A Proposal for Enforcement of Georgia's Open Meetings and Open Records Laws," see 15 Ga. St. U.L. Rev. 1075 (1999).

JUDICIAL DECISIONS

County zoning board's exclusion of public from the portion of a meeting which included the vote and decision on conditional use permits violated the Open Meetings Act,

O.C.G.A. Ch. 14, T. 50. Beck v. Crisp County Zoning Bd. of Appeals, 221 Ga. App. 801, 472 S.E.2d 558 (1996).

RESEARCH REFERENCES

ALR. — Pending or prospective litigation exception under state law making proceed-

ings by public bodies open to the public, 35 ALR5th 113.

50-14-1. Meetings to be open to public; limitation on action to contest agency action; recording; notice of time and place; access to minutes; telecommunications conferences.

(a) As used in this chapter, the term:

(1) "Agency" means:

(A) Every state department, agency, board, bureau, commission, public corporation, and authority;

(B) Every county, municipal corporation, school district, or other political subdivision of this state;

(C) Every department, agency, board, bureau, commission, authority, or similar body of each such county, municipal corporation, or other political subdivision of the state;

(D) Every city, county, regional, or other authority established pursuant to the laws of this state; and

(E) Any nonprofit organization to which there is a direct allocation of tax funds made by the governing authority of any agency as defined in this paragraph and which allocation constitutes more than 33 1/3 percent of the funds from all sources of such organization; provided, however, that this subparagraph shall not include hospitals, nursing homes, dispensers of pharmaceutical products, or any other type organization, person, or firm furnishing medical or health services to a citizen for which they receive reimbursement from the state whether directly or indirectly; nor shall this term include a subagency or affiliate of such a nonprofit organization from or through which the allocation of tax funds is made.

(2) "Meeting" means the gathering of a quorum of the members of the governing body of an agency or of any committee of its members created by such governing body, whether standing or special, pursuant to schedule, call, or notice of or from such governing body or committee or an authorized member, at a designated time and place at which any public matter, official business, or policy of the agency is to be discussed or presented or at which official action is to be taken or, in the case of a committee, recommendations on any public matter, official business, or policy to the governing body are to be formulated, presented, or discussed. The assembling together of a quorum of the members of a governing body or committee for the purpose of making inspections of physical facilities under the jurisdiction of such agency or for the purposes of meeting with the governing bodies, officers, agents, or employees of other agencies at places outside the geographical jurisdiction of an agency and at which no final official action is to be taken shall not be deemed a "meeting."

(b) Except as otherwise provided by law, all meetings as defined in subsection (a) of this Code section shall be open to the public. Any resolution, rule, regulation, ordinance, or other official action of an agency adopted, taken, or made at a meeting which is not open to the public as required by this chapter shall not be binding. Any action contesting a resolution, rule, regulation, ordinance, or other formal action of an agency based on an alleged violation of this provision must be commenced within 90 days of the date such contested action was taken, provided that any action under this chapter contesting a zoning decision of a local governing

authority shall be commenced within the time allowed by law for appeal of such zoning decision.

(c) The public at all times shall be afforded access to meetings declared open to the public pursuant to subsection (b) of this Code section. Visual, sound, and visual and sound recording during open meetings shall be permitted.

(d) Every agency shall prescribe the time, place, and dates of regular meetings of the agency. Such information shall be available to the general public and a notice containing such information shall be posted and maintained in a conspicuous place available to the public at the regular meeting place of the agency. Meetings shall be held in accordance with a regular schedule, but nothing in this subsection shall preclude an agency from canceling or postponing any regularly scheduled meeting. Whenever any meeting required to be open to the public is to be held at a time or place other than at the time and place prescribed for regular meetings, the agency shall give due notice thereof. "Due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and giving of written or oral notice at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff's sales are published in the county where regular meetings are held or at the option of the agency to a newspaper having a general circulation in said county at least equal to that of the legal organ; provided, however, that in counties where the legal organ is published less often than four times weekly "due notice" shall be the posting of a written notice for at least 24 hours at the place of regular meetings and, upon written request from any local broadcast or print media outlet whose place of business and physical facilities are located in the county, notice by telephone or facsimile to that requesting media outlet at least 24 hours in advance of the called meeting. When special circumstances occur and are so declared by an agency, that agency may hold a meeting with less than 24 hours' notice upon giving such notice of the meeting and subjects expected to be considered at the meeting as is reasonable under the circumstances including notice to said county legal organ or a newspaper having a general circulation in the county at least equal to that of the legal organ, in which event the reason for holding the meeting within 24 hours and the nature of the notice shall be recorded in the minutes. Whenever notice is given to a legal organ or other newspaper, that publication shall immediately make the information available upon inquiry to any member of the public. Any oral notice required or permitted by this subsection may be given by telephone.

(e)(1) Prior to any meeting, the agency holding such meeting shall make available an agenda of all matters expected to come before the agency at such meeting. The agenda shall be available upon request and shall be posted at the meeting site, as far in advance of the meeting as reasonably possible, but shall not be required to be available more than two weeks

prior to the meeting and shall be posted, at a minimum, at some time during the two-week period immediately prior to the meeting. Failure to include on the agenda an item which becomes necessary to address during the course of a meeting shall not preclude considering and acting upon such item.

(2) A summary of the subjects acted on and those members present at a meeting of any agency shall be written and made available to the public for inspection within two business days of the adjournment of a meeting of any agency. The minutes of a meeting of any agency shall be promptly recorded and such records shall be open to public inspection once approved as official by the agency, but in no case later than immediately following the next regular meeting of the agency; provided, however, nothing contained in this chapter shall prohibit the earlier release of minutes, whether approved by the agency or not. Said minutes shall, as a minimum, include the names of the members present at the meeting, a description of each motion or other proposal made, and a record of all votes. In the case of a roll-call vote the name of each person voting for or against a proposal shall be recorded and in all other cases it shall be presumed that the action taken was approved by each person in attendance unless the minutes reflect the name of the persons voting against the proposal or abstaining.

(f) An agency with state-wide jurisdiction shall be authorized to conduct meetings by telecommunications conference, provided that any such meeting is conducted in compliance with this chapter. (Code 1981, § 50-14-1, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, §§ 1, 2; Ga. L. 1993, p. 784, § 1; Ga. L. 1999, p. 549, §§ 1, 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, “at which” was inserted following “time and place” in the first sentence of paragraph (a)(2).

Pursuant to Code Section 28-9-5, in 1993, in paragraph (a)(2), the period at the end was moved inside the quotation marks.

Pursuant to Code Section 28-9-5, in 1999, “two-week” was substituted for “two week” in paragraph (e)(1).

Pursuant to Code Section 28-9-5, in 2009, “that” was inserted following “however,” in subparagraph (a)(1)(E).

Cross references. — Preventing or disrupting lawful meetings, gatherings, or processions, § 16-11-34. Preventing or disrupting General Assembly sessions or other meetings of members; unlawful activities within the state capitol or certain Capitol Square buildings, § 16-11-34.1.

Law reviews. — For article discussing provisions opening local government meetings

to the public, see 13 Ga. L. Rev. 97 (1978). For article discussing Georgia’s open government provisions with respect to land use planning, in light of *Evans v. Just Open Gov’t*, 242 Ga. 834, 251 S.E.2d 546 (1979), see 31 Mercer L. Rev. 89 (1979). For article, “Georgia’s Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine,” see 40 Mercer L. Rev. 1 (1988). For annual survey of local government law, see 44 Mercer L. Rev. 309 (1992). For survey article on local government law for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 353 (2003). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and

land use law, see 59 Mercer L. Rev. 493 (2007).

For note discussing Georgia's Sunshine Law requiring meetings by state and local governmental authorities to be open to the public, see 10 Ga. St. B.J. 598 (1974). For

note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 324 (1989). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 256 (1999).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

General Consideration

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Ga. L. 1972, p. 575, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Applicability of Act. — The test for applicability of the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, is two-pronged: first, is the meeting one of a "governing body of an agency" or any committee thereof; and second, is the meeting one "at which official business or policy of the agency is to be discussed or at which official action is to be taken?" *Crosland v. Butts County Bd. of Zoning Appeals*, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

Construction of Act. — The Open Meetings Act, O.C.G.A. Ch. 14, T. 50, must be broadly construed to effect the Act's purpose of protecting the public and individuals from closed door meetings. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994); *Crosland v. Butts County Bd. of Zoning Appeals*, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

Physical access not required. — The Open Meetings Act, O.C.G.A. Ch. 14, T. 50, requires adequate, advance notice of a meeting, not physical access to all members of the public. *Maxwell v. Carney*, 273 Ga. 864, 548 S.E.2d 293 (2001).

Language of this section is clear, the language applies to the meetings of the variously described bodies which are empowered to act officially for the state and at which such official action is taken. *McLarty v. Board of Regents of Univ. Sys.*, 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Unauthorized groups. — This section does not encompass the innumerable groups which are organized and meet for the purpose of collecting information, making recommendations, and rendering advice but which have no authority to make governmental decisions and act for the state. *McLarty v. Board of Regents of Univ. Sys.*, 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Construed with Recall Act. — The conduct of a public official who participates in a closed meeting that is required by law to be open can become a "ground for recall" under the Recall Act, O.C.G.A. § 21-4-1 et seq., if the circumstances of that participation come within the definition of "grounds for recall." *Steele v. Honea*, 261 Ga. 644, 409 S.E.2d 652 (1991).

"Meeting" defined. — A "meeting," within the definition of the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, may be conducted by written, telephonic, electronic, wireless, or other virtual means. A designated place may be a postal, Internet, or telephonic address. A designated time may be the date upon which requested responses are due. *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Openness of governmental meetings. — The "sunshine law" does not require notice to the public of governmental meetings; rather, the law merely requires meetings to be open to the public. *Dozier v. Norris*, 241 Ga. 230, 244 S.E.2d 853 (1978) (decided under former Ga. L. 1972, p. 575).

Scope of O.C.G.A. § 50-14-1. — This section seeks to eliminate closed meetings which engender in the people a distrust of its officials who are clothed with the power to act in their name. *McLarty v. Board of*

Regents of Univ. Sys., 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

This section deals with the openness of public meetings, not with notice of such meetings. *Harms v. Adams*, 238 Ga. 186, 232 S.E.2d 61 (1977) (decided under former Ga. L. 1972, p. 575).

"Official action" defined. — Official action is action which is taken by virtue of power granted by law, or by virtue of the office held, to act for and in behalf of the state. *McLarty v. Board of Regents of Univ. Sys.*, 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Immunity for action within scope of official duties. — Actions taken by members of county airport authority which may have violated the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, did not lose their character as actions taken within the scope of the members' official duties for purposes of immunity. *Atlanta Airmotive, Inc. v. Royal*, 214 Ga. App. 760, 449 S.E.2d 315 (1994).

Some meetings closed to public. — A county board of education may have unofficial meetings or meetings closed to the public to discuss and decide questions that fall within the enumerated exceptions of this chapter. *Deriso v. Cooper*, 245 Ga. 786, 267 S.E.2d 217 (1980) (decided under former Ga. L. 1972, p. 575).

Actions at nonpublic meetings violative of O.C.G.A. § 50-14-1. — Where there was conflicting evidence whether the substantive merits of a petition for a special land use permit to develop a solid waste landfill were discussed at nonpublic meetings of county board of zoning appeal, summary judgment for the board was precluded. *Crosland v. Butts County Bd. of Zoning Appeals*, 214 Ga. App. 295, 448 S.E.2d 454 (1994).

Prior improper meetings. — The Open Meetings Act, O.C.G.A. Ch. 14, T. 50, contains no provision authorizing a court to invalidate an ordinance on the ground that the subject matter of the ordinance was previously discussed at meetings that violate the Act. *Board of Comm'rs v. Levetan*, 270 Ga. 544, 512 S.E.2d 627 (1999).

Cited in Georgia Real Estate Comm'n v. Horne, 141 Ga. App. 226, 233 S.E.2d 16 (1977); *Worthy v. Paulding County Hosp. Auth.*, 243 Ga. 851, 257 S.E.2d 271 (1979); *Irvin v. Macon Tel. Publishing Co.*, 253 Ga.

43, 316 S.E.2d 449 (1984); *Atlanta Journal v. Babush*, 257 Ga. 790, 364 S.E.2d 560 (1988); *Walker v. City of Warner Robins*, 262 Ga. 551, 422 S.E.2d 555 (1992); *Guthrie v. Dalton City Sch. Dist.*, 213 Ga. App. 849, 446 S.E.2d 526 (1994); *Moon v. Terrell County*, 260 Ga. App. 433, 579 S.E.2d 845 (2003).

Application

Inadequate notice to landfill operator. — Although the county board of commissioners met the technical requirements of O.C.G.A. § 50-14-1(d), posting notice of the meeting in which the waste ordinance was adopted on the door of the county office building was not adequate as a matter of law since the board knew that the ordinance would affect the landfill operator's business in operating the landfill and notice was not published in the legal organ of the county because the meeting occurred before publication was possible. *Diamond Waste, Inc. v. Monroe County*, 796 F. Supp. 1511 (M.D. Ga. 1992).

Student groups. — A committee of the University of Georgia which was organized by the dean of student affairs primarily for the purpose of reviewing the student senate's recommended allocation of student activity funds does not come within the purview of this section. *McLarty v. Board of Regents of Univ. Sys.*, 231 Ga. 22, 200 S.E.2d 117 (1973) (decided under former Ga. L. 1972, p. 575).

Inapplicable to legislature. — This chapter is applicable to the departments, agencies, boards, bureaus, etc. of this state and its political subdivisions. It is not applicable to the General Assembly. *Coggin v. Davey*, 233 Ga. 407, 211 S.E.2d 708 (1975) (decided under former Ga. L. 1972, p. 575).

Inapplicable to public officer dismissals. — The Open Meetings Act, O.C.G.A. Ch. 14, T. 50, is not applicable when the dismissal of a public officer, such as a county attorney, is under consideration in accordance with O.C.G.A. § 50-14-3(6). *Brennan v. Chatham County Comm'rs*, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

Inapplicable to advisory group. — The Atlanta City Council can not constitutionally delegate subpoena power, power to punish by contempt, and the power to require sworn testimony before a court reporter to a purely private, advisory group (the Adminis-

Application (Cont'd)

trative Review Panel), and the attempt by the city council to do so is void. Accordingly, since the purported delegation of official power to the panel is constitutionally infirm, the panel has no lawful official power, and is a purely advisory group, not subject to the provisions of O.C.G.A. Ch. 14, T. 50. *Atlanta Journal v. Hill*, 257 Ga. 398, 359 S.E.2d 913 (1987) (decided prior to 1988 repeal and reenactment).

Meeting scheduled to avoid holiday. — Owners of property annexed by a city did not show, under O.C.G.A. § 50-14-1 (d), that the annexation ordinance was adopted at an improperly rescheduled city meeting held prior to the date on which the meeting would normally be held; the meeting was not rescheduled, as it was noted on the official notice of city government meetings that the meeting would not be held on the meeting's normal day of every other Thursday because that would fall on Christmas, and that the meeting date would be scheduled later, which it was, and the meeting was held on the date scheduled. *Bradley Plywood Corp. v. Mayor & Aldermen of Savannah*, 271 Ga. App. 828, 611 S.E.2d 105 (2005).

Committee meeting within purview of Act. — The Olympic Task Force Selection Committee of the Atlanta Housing Authority (AHA), formed with the knowledge and approval of AHA and consisting of several AHA decisionmakers, was a vehicle for the agency to carry out the agency's responsibilities and, thus, a meeting of the committee was within the purview of the Open Meetings Act, O.C.G.A. Ch. 14, T. 50. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994).

Coroner's inquest constitutes a "meeting" within the meaning of O.C.G.A. § 50-14-1 (a)(2). *Kilgore v. R.W. Page Corp.*, 261 Ga. 410, 405 S.E.2d 655 (1991).

Private, nonprofit hospital corporations that served as vehicles through which public hospital authorities carried out their official responsibilities were subject to the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, and the Open Records Act, O.C.G.A. Ch. 14, T. 50. *Northwest Ga. Health Sys. v. Times-Journal, Inc.*, 218 Ga. App. 336, 461 S.E.2d 297 (1995).

Student organization court hearings open. — The trial court erred in concluding that

the hearings of the student-run organization court were not subject to the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, given that the court was the official vehicle by which the university carried out the university's responsibility, as directed by the Board of Regents, to regulate social organizations. *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993).

Records of private university's police force. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make them officers or employees of a public office or agency for purposes of the Open Records Act. *The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P.*, 271 Ga. App. 501, 610 S.E.2d 138 (2005).

Where inquest was closed to public. — Relief sought in a newspaper publisher's suit against a coroner to prohibit the coroner from closing to the public a scheduled inquest was governed by the Open Meetings Law, O.C.G.A. Ch. 14, T. 50, and the Open Records Law, O.C.G.A. § 50-18-70. *Kilgore v. R.W. Page Corp.*, 259 Ga. 556, 385 S.E.2d 406 (1989).

Provision of videotape of meeting is not compliance. — Atlanta Housing Authority did not substantially comply with the statute by providing a citizen with a videotape of a meeting of the Olympic Task Force Selection Committee after the agency accepted the recommendation of the committee. *Jersawitz v. Fortson*, 213 Ga. App. 796, 446 S.E.2d 206 (1994).

Open meetings cannot be closed by one citizen. — Because the public has the right to access to a meeting declared open to the public, one citizen cannot elect to close a meeting that should be open. *Moon v. Terrell County*, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

Error to hold closed executive session. — Grand jury presentments questioning the propriety of certain policies of county commissioners did not amount to pending or potential litigation so the attorney-client privilege did not apply to a meeting conducted to fashion a response to the presentments, and the commissioners violated O.C.G.A. § 50-14-1(b) by conducting an executive session concerning the presentments. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 632 S.E.2d 113 (2006).

Injunctive relief not available to compel compliance in the future. — Trial court erred in issuing temporary and permanent injunctions ordering a county board of commissioners to comply with the Open Records Act, O.C.G.A. § 50-14-1 et seq., in the future as the board already had a duty to obey the law, and the complaint for injunctive relief, which was filed by the director of a county

agency, averred no more than apprehensions of future injury, for which injunctive relief was not available. *Wiggins v. Bd. of Comm'rs*, 258 Ga. App. 666, 574 S.E.2d 874 (2002).

Violation of agenda-posting requirement not found. — Because no allegation, much less evidence, was presented by a county property buyer that a technical violation of the agenda-posting requirement under O.C.G.A. § 50-14-1(e)(1) deprived the buyer of a fair and open consideration of its claim or in any way impeded the remedial and protective purposes of the Open Meetings Act, the posting of the agenda at the regular meeting place of the county board of commissioners, rather than at the actual meeting site, sufficiently complied with the statute's requirements. *EarthResources, LLC v. Morgan County*, 281 Ga. 396, 638 S.E.2d 325 (2006).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under former Ga. L. 1972, p. 575, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Applicability of O.C.G.A. § 50-14-1. — This section, the "sunshine law," does not cover meetings at which no official action may be taken. 1978 Op. Att'y Gen. No. U78-2 (decided under former Ga. L. 1972, p. 575).

County board of tax assessors and county board of equalization are subject to the Georgia Open Meetings Law. O.C.G.A. Ch. 14, T. 50. 1995 Op. Att'y Gen. No. U95-22.

Ad hoc "public record" evaluation. — Question of whether specific investigation or inspection report is "public record" must be answered on a case-by-case basis. 1980 Op. Att'y Gen. No. 80-105 (decided under former Ga. L. 1972, p. 575).

Inspection of board-initiated investigation files. — Unless files reflecting board-initiated investigation meet definition of former subsection (b) of this section, citizen does not have a right to inspect such a file as a public record under former Ga. L. 1959, p. 88, § 1 (see O.C.G.A. § 50-18-70). 1980 Op. Att'y Gen. No. 80-84 (decided under former Ga. L. 1972, p. 575).

Written memorials of final action disclosable. — Investigative materials that are not prepared and kept as written memorials of final board action should not be disclosed to the public. However, those portions of board meeting minutes which deal with final action taken as to a particular applicant may be disclosed. 1980 Op. Att'y Gen. No. 80-84 (decided under former Ga. L. 1972, p. 575).

Insurer's individual loss ratio experience. — Unless statistical information as to insurer's individual loss ratio experience submitted to Insurance Commissioner constitutes "written memorials of a final action" taken by the Insurance Department, a citizen does not have the right to inspect the information submitted as a public record and the Insurance Commissioner is not required to release it. 1981 Op. Att'y Gen. No. 81-66.

Meetings of Organized Crime Prevention Council. — Since the Organized Crime Prevention Council is a law enforcement agency, its proceedings and meetings are not required to be open to the public under the Georgia Open Meetings Statute. 1986 Op. Att'y Gen. No. U86-35 (decided under former Ga. L. 1972, p. 575).

School board meetings regarding personnel matters. — School board may not close

any meeting devoted to the airing of grievances about school personnel by interested members of the public; further, should the board conduct an inquiry into the actions of school personnel, any evidence or argument presented to the board must be held in an open meeting, but the board may close that portion of the meeting consisting of deliberation or discussion of disciplinary action upon proper compliance with the statutory closure provisions. 1995 Op. Att'y Gen. No. U95-15.

Student disciplinary hearings before local boards of education, including any deliberations of the board at which final action is taken or discussed, are required to be open to the public. 1983 Op. Att'y Gen. No. 83-9.

Meetings by telephone conference call. — Meetings of the Stone Mountain Memorial Association may be conducted by speaker telephone conference where public access is provided. 1985 Op. Att'y Gen. No. 85-26, modifying 1970 Op. Att'y Gen. No. 70-122.

Utilization of a telephonic conference is permissible for a regular meeting of the State Properties Commission; such a meeting may be conducted to meet the require-

ments of the Open and Public Meetings Act, O.C.G.A. Ch. 14, T. 50, and members participating by telephonic means in such a meeting may be counted to reach a quorum. 1994 Op. Att'y Gen. No. 94-11.

State Ethics Commission is an "agency" as contemplated by O.C.G.A. Ch. 14, T. 50. 1989 Op. Att'y Gen. No. 89-6.

The State Ethics Commission activities conducted in accordance with O.C.G.A. § 21-5-6(b)(10)(A), including convening a quorum to hear testimony, taking evidence, considering argument of the parties, deliberating, and imposing penalties, constitute a "meeting" within the meaning of Open Meetings Law, O.C.G.A. Ch. 14, T. 50. Accordingly, the commission must conduct all of these activities regarding the resolution of a contested case in accordance with the dictates of the Open Meetings Law. 1989 Op. Att'y Gen. No. 89-6.

Private Industry Councils are "agencies" for purposes of the Open Meetings Law, O.C.G.A. Ch. 14, T. 50, and records generally maintained by such PIC's are subject to the Open Records Law, O.C.G.A. § 50-18-70. 1989 Op. Att'y Gen. No. 89-5.

RESEARCH REFERENCES

ALR. — Emergency exception under state law making proceedings by public bodies open to the public, 33 ALR5th 731.

Attorney-client exception under state law making proceedings by public bodies open to the public, 34 ALR5th 591.

50-14-2. Certain privileges not repealed.

This chapter shall not be construed so as to repeal in any way:

(1) The attorney-client privilege recognized by state law to the extent that a meeting otherwise required to be open to the public under this chapter may be closed in order to consult and meet with legal counsel pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee or in which the agency or any officer or employee may be directly involved; provided, however, the meeting may not be closed for advice or consultation on whether to close a meeting; and

(2) Those tax matters which are otherwise made confidential by state law. (Code 1981, § 50-14-2, enacted by Ga. L. 1988, p. 235, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection

designation "(a)" was deleted since this Code section contains no subsection (b).

Law reviews. — For survey article on local government law, see 59 Mercer L. Rev. 285 (2007).

JUDICIAL DECISIONS

Attorney-client exception. — A closed meeting of the board of county commissioners with the county attorney about zoning litigation came within the attorney-client exception of O.C.G.A. § 50-14-2. *Schoen v. Cherokee County*, 242 Ga. App. 501, 530 S.E.2d 226 (2000).

A meeting may not be closed to discuss potential litigation under the attorney-client exception unless the governmental entity can show a realistic and tangible threat of legal action against it or its officer or employee. The threat must go beyond a mere fear or suspicion of being sued. *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Grand jury presentments questioning the propriety of certain policies of county commissioners did not amount to pending or potential litigation so the attorney-client privilege did not apply to a meeting conducted to fashion a response to the presentments, and the commissioners violated O.C.G.A. § 50-14-1(b) by conducting an executive session concerning the presentments. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 632 S.E.2d 113 (2006).

Cited in *Mullis Tree Serv. v. Bibb County*, 828 F. Supp. 53 (M.D. Ga. 1993).

RESEARCH REFERENCES

ALR. — Attorney-client exception under state law making proceedings by public bodies open to the public, 34 ALR5th 591.

50-14-3. Excluded proceedings.

This chapter shall not apply to the following:

(1) Staff meetings held for investigative purposes under duties or responsibilities imposed by law;

(2) The deliberations and voting of the State Board of Pardons and Paroles; and in addition said board may close a meeting held for the purpose of receiving information or evidence for or against clemency or in revocation proceedings if it determines that the receipt of such information or evidence in open meeting would present a substantial risk of harm or injury to a witness;

(3) Meetings of the Georgia Bureau of Investigation or any other law enforcement agency in the state, including grand jury meetings;

(4) Meetings when any agency is discussing the future acquisition of real estate, except that such meetings shall be subject to the requirements of this chapter for the giving of the notice of such a meeting to the public and preparing the minutes of such a meeting; provided, however, the disclosure of such portions of the minutes as would identify real estate to be acquired may be delayed until such time as the acquisition of the real

estate has been completed, terminated, or abandoned or court proceedings with respect thereto initiated;

(5) Meetings of the governing authority of a public hospital or any committee thereof when discussing the granting, restriction, or revocation of staff privileges or the granting of abortions under state or federal law;

(6) Meetings when discussing or deliberating upon the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee but not when receiving evidence or hearing argument on charges filed to determine disciplinary action or dismissal of a public officer or employee. The vote on any matter covered by this paragraph shall be taken in public and minutes of the meeting as provided in this chapter shall be made available. Meetings by an agency to discuss or take action on the filling of a vacancy in the membership of the agency itself shall at all times be open to the public as provided in this chapter;

(7) Adoptions and proceedings related thereto;

(8) Meetings of the board of trustees or the investment committee of any public retirement system created by Title 47 when such board or committee is discussing matters pertaining to investment securities trading or investment portfolio positions and composition; and

(9) Meetings when discussing any records that are exempt from public inspection or disclosure pursuant to paragraph (15) of subsection (a) of Code Section 50-18-72, when discussing any information a record of which would be exempt from public inspection or disclosure under said paragraph, or when reviewing or discussing any security plan under consideration pursuant to paragraph (10) of subsection (a) of Code Section 15-16-10. (Code 1981, § 50-14-3, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 3; Ga. L. 1997, p. 44, § 2; Ga. L. 2003, p. 880, § 1; Ga. L. 2006, p. 560, § 4/SB 462.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “paragraph” was substituted for “subsection” in paragraph (6).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

There is no exception for pending criminal investigations. Kilgore v. R.W. Page Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

Dismissal of a public officer. — O.C.G.A. Ch. 14, T. 50 is not applicable when the dismissal of a public officer is under consid-

eration. Brennan v. Chatham County Comm'rs, 209 Ga. App. 177, 433 S.E.2d 597 (1993).

Coroner does not constitute a “law enforcement agency” within the meaning of O.C.G.A. § 50-14-3(3). Kilgore v. R.W. Page

Corp., 261 Ga. 410, 405 S.E.2d 655 (1991).

Meeting to discuss dismissal of employee. — Where the county commission discussed an employee's job performance at meetings and did not take any vote or other official action on the employee's employment, the commission did not violate the Open Meetings Law, O.C.G.A. Ch. 14, T. 50. *Camden County v. Haddock*, 271 Ga. 664, 523 S.E.2d 291 (1999).

Open Meetings Law, O.C.G.A. Ch. 14, T. 50, applied to a meeting of county commissioners called to determine whether a deputy warden of a corrections institute would continue to be employed because the board acted pursuant to a letter from the DOC, which was clearly considered because it was the stated basis for the warden's termination. *Moon v. Terrell County*, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

County equalization board deliberations not exempt from Act. — County equalization board held an open meeting to take evidence on the disputed tax assessment value of property but then violated the Georgia Open Meetings Act, O.C.G.A. § 50-14-3, when the board closed the meeting and deliberated and voted in private. *Bryan County Bd. of Equalization v. Bryan County Bd. of Tax Assessors*, 253 Ga. App. 831, 560 S.E.2d 719 (2002), cert. denied, 537 U.S. 1190, 123 S. Ct. 1260, 154 L. Ed. 2d 1023 (2003).

Cited in *Athens Observer, Inc. v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980); *Saleem v. Snow*, 217 Ga. App. 883, 460 S.E.2d 104 (1995); *Wiggins v. Bd. of Comm'rs*, 258 Ga. App. 666, 574 S.E.2d 874 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Applicability of O.C.G.A. Ch. 14, T. 50. — Provisions on open and public meetings was not meant to apply and does not apply to every governmental entity. 1979 Op. Att'y Gen. No. 79-25.

Provisions on open and public meetings did not apply to entities within the judicial branch of state government, as nothing in the law contradicted this conclusion; the law contained no reference to the judicial branch, any of its parts, or any judicial function. 1979 Op. Att'y Gen. No. 79-25.

State Ethics Commission sessions not excluded. — There is no statutory provision in O.C.G.A. § 50-14-3 or the Georgia Administrative Procedure Act, O.C.G.A. Ch. 13, T. 50, which would authorize the State Ethics Commission to deliberate in closed session after hearing evidence in a contested case. 1989 Op. Att'y Gen. No. 89-6.

O.C.G.A. Ch. 14, T. 50 does not apply to Board of Court Reporting or any other agency. — Provisions on open and public meetings did not apply to Board of Court Reporting or any other agency of the judicial branch of government. 1979 Op. Att'y Gen. No. 79-25.

Advisory Committee on Area Planning and Development is subject to Georgia's Open Meetings Law, O.C.G.A. Ch. 14, T. 50. 1985 Op. Att'y Gen. No. U85-42.

Subsequent Injury Trust Fund Board meetings. — The portion of Subsequent

Injury Trust Fund Board meetings in which the medical and rehabilitation records of an individual are discussed are not subject to the Open Meetings Law, O.C.G.A. Ch. 14, T. 50. 1991 Op. Att'y Gen. No. 91-8.

The portions of the Subsequent Injury Trust Fund Board meetings in which personnel matters are discussed are not subject to the Open Meetings Law, O.C.G.A. Ch. 14, T. 50, unless the board is conducting an evidentiary hearing or entertaining argument in a disciplinary proceeding. 1991 Op. Att'y Gen. 91-8.

Notice of closure of public meeting. — Prior public notice that a portion of a properly advertised open meeting will be closed is not required. 1998 Op. Att'y Gen. No. U98-3.

Executive sessions. — Portions of the official meeting may be closed or conducted in "executive" sessions under specific circumstances if the proper procedures are followed. 1998 Op. Att'y Gen. No. U98-3.

There is no limitation on who may be invited into executive sessions. 1998 Op. Att'y Gen. No. U98-3.

A county board can discuss or deliberate on the appointment of a county attorney, county physician, or county administrator in closed session, but must vote on the appointment in public. 1998 Op. Att'y Gen. No. U98-3.

Provisions as to executive sessions apply to cities and to public hospital authorities when those entities they are conducting "strategic planning sessions." 1998 Op. Att'y Gen. No. U98-3.

There are no requirements regarding the taking of minutes of proceedings in an executive session. 1998 Op. Att'y Gen. No. U98-3.

50-14-4. Procedure when meeting closed.

(a) When any meeting of an agency is closed to the public pursuant to any provision of this chapter, the specific reasons for such closure shall be entered upon the official minutes, the meeting shall not be closed to the public except by a majority vote of a quorum present for the meeting, the minutes shall reflect the names of the members present and the names of those voting for closure, and that part of the minutes shall be made available to the public as any other minutes. Where a meeting of an agency is devoted in part to matters within the exceptions provided by law, any portion of the meeting not subject to any such exception, privilege, or confidentiality shall be open to the public, and the minutes of such portions not subject to any such exception shall be taken, recorded, and open to public inspection as provided in subsection (e) of Code Section 50-14-1.

(b) When any meeting of an agency is closed to the public pursuant to subsection (a) of this Code section, the chairperson or other person presiding over such meeting shall execute and file with the official minutes of the meeting a notarized affidavit stating under oath that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law and identifying the specific relevant exception. (Code 1981, § 50-14-4, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1999, p. 549, § 3.)

Law reviews. — For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 256 (1999).

JUDICIAL DECISIONS

Compliance with requirements as to minutes. — Trial court erred in holding that minutes complied with the requirements of O.C.G.A. § 50-14-4(a) since the minutes did not reflect "the names of the members present and the names of those voting for closure," but only indicated the names of commissioners moving and seconding a motion to go into closed session. *Moon v. Terrell County*, 249 Ga. App. 567, 548 S.E.2d 680 (2001).

Filing of minutes and affidavits. — Because minutes and affidavits are required to be timely recorded and made open to public inspection so that the general public knows

when and where to find an official accounting of the business that transpired, the trial court erred in failing to find that the failure of the county board of commissioners to timely file an affidavit and minutes pertaining to a particular meeting constituted a violation. *Claxton Enter. v. Evans County Bd. of Comm'rs*, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Open Meetings Law does not apply to judicial branch. — The legislature did not intend for the Open Meetings Law, O.C.G.A. Ch. 14, T. 50, to apply to the judicial branch of government. Therefore, a judicial commission is not subject to that chapter. *Fathers*

Are Parents Too, Inc. v. Hunstein, 202 Ga. App. 716, 415 S.E.2d 322 (1992).

Cited in Atlanta Journal v. Babush, 257 Ga. 790, 364 S.E.2d 560 (1988).

OPINIONS OF THE ATTORNEY GENERAL

Notice provisions for closed meetings. — An agency must comply with the notice provisions of the Open Meetings Law, O.C.G.A. Ch. 14, T. 50, when a meeting, as defined in the law, is to be held in closed

session. Minutes available to the public are limited to the reasons for closure, the names of the members present, and the names of those voting for closure. 1988 Op. Att’y Gen. No. U88-30.

RESEARCH REFERENCES

ALR. — Emergency exception under state law making proceedings by public bodies open to the public, 33 ALR5th 731.

50-14-5. Jurisdiction to enforce chapter.

(a) The superior courts of this state shall have jurisdiction to enforce compliance with the provisions of this chapter, including the power to grant injunctions or other equitable relief. In addition to any action that may be brought by any person, firm, corporation, or other entity, the Attorney General shall have authority to bring enforcement actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this chapter.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that an agency acted without substantial justification in not complying with this chapter, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney’s fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information. (Code 1981, § 50-14-5, enacted by Ga. L. 1988, p. 235, § 1; Ga. L. 1992, p. 1061, § 4; Ga. L. 1998, p. 595, § 1.)

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 242 (1998).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

Special circumstance. — That no official action is taken at a closed meeting is not

necessarily a “special circumstance” for purposes of reducing or eliminating liability for

a fee award under O.C.G.A. § 50-14-5(b) of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., because the need for open government is not limited to meetings in which formal measures are taken. *Evans County Bd. of Comm'rs v. Claxton Enter.*, 255 Ga. App. 656, 566 S.E.2d 399 (2002).

Attorney's fees. — If the trial court determines that noncompliance with the Open Meetings Act, O.C.G.A. Ch. 14, T. 50, lacked substantial justification, the court must award attorney fees; then the court may reduce or eliminate the award completely upon a finding of special circumstances.

Claxton Enter. v. Evans County Bd. of Comm'rs, 249 Ga. App. 870, 549 S.E.2d 830 (2001).

Acting without substantial justification and acting in bad faith are not synonymous for purposes of an attorney fee award under O.C.G.A. § 50-14-5(b) of the Open Meetings Act, O.C.G.A. § 50-14-1 et seq. *Evans County Bd. of Comm'rs v. Claxton Enter.*, 255 Ga. App. 656, 566 S.E.2d 399 (2002).

Cited in *Schoen v. Cherokee County*, 242 Ga. App. 501, 530 S.E.2d 226 (2000); *Moon v. Terrell County*, 260 Ga. App. 433, 579 S.E.2d 845 (2003).

50-14-6. Violation of chapter; penalty.

Any person knowingly and willfully conducting or participating in a meeting in violation of this chapter shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$500.00. (Code 1981, § 50-14-6, enacted by Ga. L. 1988, p. 235, § 1.)

JUDICIAL DECISIONS

Cited in *Wiggins v. Bd. of Comm'rs*, 258 Ga. App. 666, 574 S.E.2d 874 (2002).

CHAPTER 15

PUBLIC LAWSUITS

Sec.		Sec.	
50-15-1.	Definitions.	50-15-3.	Expeditious hearing and determination of lawsuits and appeals.
50-15-2.	Petition by political subdivision for posting of bond by opposing party or intervenor; hearing; dismissal upon failure to file bond; appeal.	50-15-4.	Commencement of subsequent actions.

Cross references. — Reimbursement of expenses of state officers generally, § 45-7-20 et seq.

Law reviews. — For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

50-15-1. Definitions.

As used in this chapter, the term:

- (1) “Political subdivision” means the state or any local subdivision of the state or public instrumentality or public corporate body created by or under authority of state law, including, but not limited to, municipalities, counties, school districts, special taxing districts, conservation districts, authorities, and any other state or local public instrumentality or corporation which has the right to bring and defend actions or to issue its bonds or other obligations as evidence of indebtedness under any provision of law and also means any corporate or other entity which leases a public improvement to such political subdivision; and the term also means the governing body of such political subdivision and its members and officers in their official capacity.
- (2) “Public lawsuit” means any action whereby the validity, reasonability, soundness, location, wisdom, feasibility, extent, or character of construction, improvement, financing, or leasing of any public improvement, project, or facility by any political subdivision, as owner or as lessee, is questioned directly or indirectly, including, but not limited to, actions for declaratory judgments or injunctions or interventions to declare invalid or to enjoin or to prevent such construction, improvement, financing, or leasing as lessor or as lessee and means any action to prevent or declare invalid or enjoin the creation, organization, or formation of any such political subdivision. This definition as used in this chapter shall not be construed to broaden any right of action as is validly limited by applicable law. (Ga. L. 1969, p. 815, § 1.)

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 53.

50-15-2. Petition by political subdivision for posting of bond by opposing party or intervenor; hearing; dismissal upon failure to file bond; appeal.

At any time prior to the final determination of a public lawsuit in the trial court or on appeal, any political subdivision which is a party to the action may petition for an order of the court that the opposing party or parties or intervenors be dismissed unless such opposing party or parties or intervenors post a bond with surety to be approved by the court payable to the moving party for the payment of all damages and costs which may accrue by reason of such opposition or intervention in the event the moving party prevails. The moving party shall obtain from a judge of the court an order requiring the opposing party or parties or intervenors to appear at such time and place within 20 days from the filing of the petition as the judge may direct and to show cause, if any exists, why the prayers of the petition should not be granted. The petition and order shall be served in the manner provided by law for the service of orders and pleadings subsequent to the original complaint. If, at the hearing of the petition on the order to show cause, the court determines that it is in the public interest to do so, the court shall set the amount of bond to be filed by the opposing party or parties or intervenors in an amount found by the court to cover all damage and costs which may accrue to the political subdivision by reason of the opposition or intervention in the event the political subdivision prevails. In the event the bond is not filed by the opposing party or parties or intervenors with surety approved by the court within ten days after the order is entered, the opposing party or parties or intervenors shall be dismissed by operation of law. Either the opposing party or parties or intervenors or the political subdivision may appeal the order under the procedure provided by law in cases of injunction. The appellate court may stay the lower court order pending its own decision, may set a bond to be filed by the opposing party or parties or intervenors in connection therewith, may modify the order of the lower court, or may enter its order as a final order in the case. In the event no bond is filed as provided in this Code section, the opposing party or parties or intervenors shall be dismissed by operation of law; and, upon final determination of the case, no court shall have further jurisdiction of any action involving any issue which was or could have been raised therein. (Ga. L. 1969, p. 815, § 2.)

Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

JUDICIAL DECISIONS

Requirement for bond not in the “public interest.” — Trial court abused the court’s discretion in requiring the intervenors to post a surety bond where meritorious claims were raised concerning whether proposed contracts met constitutional requirements for intergovernmental contracts that are not subject to the constitutional debt clause and whether a proposed project promoted the development of trade, commerce, and industry under Ga. Const. 1983, Art. IX, Sec. VI, Para. III and the Development Authority Law, O.C.G.A. § 36-62-1 et seq. *Haney v. Development Auth.*, 271 Ga. 403, 519 S.E.2d 665 (1999).

Validation upheld. — After a trial court required two intervenors to post a bond of \$625,000 with regard to their challenge to the public improvement bond approved by a city’s building authority for a sewer project, the trial court properly validated the bond by following all necessary procedural requirements and the bond did not violate Ga. Const. 1983, Art. IX, Sec. V, Para. I(a) since the city’s payment for the use of the sewer project was a debt specifically authorized under the constitution pursuant to Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). *Berry v. City of E. Point*, 277 Ga. App. 649, 627 S.E.2d 391 (2006).

RESEARCH REFERENCES

C.J.S. — 11 C.J.S., Bonds, § 9.

ALR. — Constitutionality, construction, and application of statutes requiring bond

or other security in taxpayers’ action, 41 ALR5th 47.

50-15-3. Expeditious hearing and determination of lawsuits and appeals.

The trial of a public lawsuit, the hearing of any appeal therefrom, and the determination of such lawsuit and appeal shall be advanced by the trial court and by the appellate court respectively, without request of any party, as expeditiously as is reasonably possible. (Ga. L. 1969, p. 815, § 3.)

50-15-4. Commencement of subsequent actions.

After a public lawsuit is commenced, no other action relating to the same subject matter shall be commenced, and no trial court shall have jurisdiction of any such subsequent action. This provision, however, shall not diminish any right of intervention of any person or the right of any person to become a named party in a public lawsuit; and nothing herein contained shall be construed as adversely affecting the constitutional rights of any citizen or taxpayer. (Ga. L. 1969, p. 815, § 4.)

CHAPTER 16

PUBLIC PROPERTY

Article 1		Sec.	
General Provisions			
Sec.			
50-16-1.	Land reserved to the state.		
50-16-2.	State owned stock.		
50-16-3.	Property of state boards and departments.	50-16-13.	ance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of Treasury and Fiscal Services.
50-16-3.1.	State authorities prohibited from selling real property; exceptions.		Authorization for state insurance and hazard reserve fund to contract for fire protection systems; cost limitation; approval by legislative subcommittees.
50-16-4.	Use and keeper of capitol buildings and grounds.	50-16-14.	Authorization of security personnel to deny entrance and remove persons from state property; assistance.
50-16-5.	Defacing or injuring capitol building or grounds.		Adjutant general authorized to empower contract security guards to make arrests and carry firearms upon and surrounding National Guard facilities.
50-16-5.1.	Commission on the Preservation of the State Capitol.	50-16-15.	Penalty for refusal to obey security personnel or law enforcement officer.
50-16-5.2.	Georgia Art Policy Committee created; composition; terms; annual meetings; expense allowance; powers and duties [Repealed].	50-16-16.	Rights and remedies of state and other governmental entities relating to property ownership.
50-16-6.	Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property.	50-16-17.	Writing off small amounts due to state.
50-16-7.	Improvement of real estate held by state in fee simple with reversionary interest in federal government or under long-term federal license.	50-16-18.	State development projects; landscape plan requirements.
50-16-8.	Insurance of state property required; self-insurance program authorized.	50-16-19.	Timing of official designations in honor of state agency or state officials [Repealed].
50-16-9.	Formulation of self-insurance plan for state's properties; incentive programs authorized.		
50-16-10.	Formulation of self-insurance plan for public school buildings [Repealed].	50-16-20.	
50-16-11.	Employment of personnel to carry out self-insurance plans.		
50-16-11.1.	Commercial property policies for coverage of buildings, contents, and other property owned by community service boards.	50-16-30.	
50-16-12.	Authorization for state insur-	50-16-31.	
		50-16-32.	

Article 2

State Properties Code

- Short title.
- Definitions.
- Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.

Sec.	
50-16-33.	Assignment of State Properties Commission to Department of Administrative Services [Repealed].
50-16-34.	Powers and duties of State Properties Commission generally.
50-16-34.1.	Acquisition of property within railroad lines abandoned as operating rail lines.
50-16-35.	State Property Officer; employment of personnel by the commission; merit system; rights under Employees' Retirement System of Georgia.
50-16-36.	Maintenance of records by State Properties Commission; open to public inspection.
50-16-37.	Adoption of rules and regulations by State Properties Commission; penalty for violation.
50-16-38.	All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions.
50-16-39.	Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by commission, General Assembly, or Governor; execution of leases and deeds.
50-16-40.	Interesse termini provisions not considered.
50-16-41.	Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization of administrative space; reassignment of administrative space; rules and regulations.
50-16-42.	Revocable license agreements without competitive bidding authorized; terms and conditions; telegraph or telephone lines construction provisions unaffected; exception.
50-16-43.	Leasing of state owned lands for exploration and extraction of mineral resources.

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50-16-44.	Power of eminent domain; provisions cumulative and not to supersede other powers; form of proceedings; acquisition of public property or interest.
50-16-45.	Department of Natural Resources authorized to convey certain property without commission approval.
50-16-46.	State agencies directed to provide State Properties Commission with technical assistance.
50-16-47.	Article to be construed liberally.

Article 3

Governor's Powers Generally

50-16-60.	Governor to issue land grants.
50-16-61.	General supervision and office assignment.
50-16-62.	Actions for recovery of state debts.
50-16-63.	Governor authorized to lend art objects, pictures, and other personal property to institutions for display.
50-16-64.	Authority for Governor to purchase property at sheriff's sale under execution in favor of state.
50-16-65.	Authority for Governor to rent or sell property purchased at sheriff's sale; manner of sales.
50-16-66.	Authority to pay exemptions and superior liens and encumbrances on property purchased at sheriff's sale.
50-16-67.	Report to General Assembly of transactions involving property purchased at sheriff's sale.
50-16-68.	Use and title of property purchased at sheriff's sale.

Article 4

Miscellaneous Sale and Purchase Provisions

50-16-80.	Sale or disposition of state livestock or swine.
50-16-81.	Contracts by state or subdivision for purchase, lease, or

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acquisition of United States equipment, supplies, materials, or other property.

50-16-82. Effect of payment of purchase money or other consideration causing property to be transferred to state.

Article 5

Western and Atlantic Railroad

50-16-100. Exclusive state property.
50-16-101. Relationship of state as owner of railroad.
50-16-102. All railroad laws to apply.
50-16-103. Landowners authorized to build stock gaps.
50-16-104. Power of condemnation authorized.
50-16-105. Width of land taken by condemnation.
50-16-106. Manner for determining rights and compensation in condemnation proceeding.
50-16-107. Rights acquired by condemnation to vest in state.
50-16-108. Lessee subject to Public Service Commission regulation.

Article 6

Inventory of Property

PART 1

INVENTORY OF REAL PROPERTY

50-16-120. Definitions.
50-16-121. Real property inventory; form; filing of duplicate with State Properties Commission; index inventories and devising of forms; completion of forms within 30 days.
50-16-122. Requirements for real property acquired or disposed of by the state; filing conveyances with State Properties Commission.
50-16-123. Conveyances and condemnation orders to be filed with State Properties Commission.
50-16-124. State entities to compile information for an inventory of all state owned or leased facilities and real property.

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50-16-125. Rules and regulations authorized.

PART 2

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50-16-140. "Proper authority" defined.
50-16-141. Inventory required of state and county officers; entry of inventory into book.
50-16-142. Receipt for property received from predecessor in office; accounting for property not turned over.
50-16-143. Examination of predecessor's inventories; report.
50-16-144. Sale or disposition of unserviceable property [Repealed].
50-16-145. Actions against public officers for violations of part.

PART 3

CENTRAL INVENTORY OF PERSONAL PROPERTY

50-16-160. Department of Administrative Services to establish and maintain inventory; state employees to furnish information; inspection and copies of records.
50-16-161. Part applicable to movable personal property; determination to include or exclude items from inventory binding [Repealed].
50-16-161.1. "Movable personal property" defined; inclusion or exclusion of items from inventory.
50-16-162. Rules and regulations.
50-16-163. Power to examine books, records, papers, or personal property of state entities to ensure compliance.

Article 7

Commission on Condemnation of Public Property

50-16-180. Definitions.
50-16-181. Creation; membership; officers; quorum; voting requirements; call, notice, and minutes or transcripts of

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	meetings; seal; bylaws; ex-	50-16-183.	Procedure for acquisition of
	penses.		public property by condem-
50-16-182.	Powers and duties.		nation.

OPINIONS OF THE ATTORNEY GENERAL

Compliance with Environmental Policy Act. — State Properties Commission may require state agencies to demonstrate compliance with the Environmental Policy Act, O.C.G.A. Ch. 16, T. 12, before acquiring real property for activities which will be subject to the Act. 1992 Op. Att’y Gen. No. 92-5.

ARTICLE 1

GENERAL PROVISIONS

50-16-1. Land reserved to the state.

The lands heretofore specially reserved to the state are: the lands known as the McIntosh Reserve, on which is situated the Indian spring; a quantity of land on Flint River, opposite the old Indian agency; one square mile on the Chattahoochee River at McIntosh Ferry; five square miles on the Chattahoochee River at Cusseta Falls, including the falls; all islands contained in any of the navigable waters of the state and not disposed of, and the western bank of the Chattahoochee River to high-water mark where it forms the boundary between Georgia and Alabama; the fractional parts of surveys created by the different land divisions which are not granted or otherwise disposed of; and all lands omitted to be surveyed, granted, or sold. (Orig. Code 1863, § 887; Code 1868, § 966; Code 1873, § 962; Code 1882, § 962; Ga. L. 1889, p. 171, § 1; Civil Code 1895, § 1018; Civil Code 1910, § 1285; Code 1933, § 91-102.)

50-16-2. State owned stock.

The state owns 3,636 shares of stock in the Georgia Railroad and Banking Company. (Orig. Code 1863, § 936; Code 1868, § 1017; Code 1873, § 1013; Code 1882, § 1013; Civil Code 1895, § 1019; Civil Code 1910, § 1286; Code 1933, § 91-103.)

OPINIONS OF THE ATTORNEY GENERAL

Only General Assembly is authorized to sell intangible property owned by state. 1969 Op. Att’y Gen. No. 69-257.

50-16-3. Property of state boards and departments.

The state holds the legal title to or is the beneficial owner of:

(1) The several institutions operated by the Board of Regents of the University System of Georgia, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to the board for the use of any of the institutions or for educational purposes or conveyed to any of the boards of trustees of which the board of regents is the successor or to any of the institutions under its control;

(2) The several institutions operated by the Department of Human Services, the Department of Community Health, or the Department of Behavioral Health and Developmental Disabilities, including all real and personal property belonging to the several institutions or used in connection therewith, and all other property conveyed to any such department for the use of any of the institutions or conveyed to any of the boards of trustees of which such department is the successor or to any of the institutions under its control;

(3) The rights of way of the state highway system and all buildings, lands, quarries, equipment, and other property of the Department of Transportation; and

(4) All lands and other property conveyed to or held by the Department of Natural Resources and the State Forestry Commission, or their predecessors, for forestry or park purposes. (Orig. Code 1863, § 886; Code 1868, § 965; Code 1873, § 961; Code 1882, § 961; Civil Code 1895, § 1015; Civil Code 1910, § 1282; Ga. L. 1919, p. 242, § 1; Ga. L. 1931, p. 7, §§ 26-89; Code 1933, § 91-104; Ga. L. 2009, p. 453, § 1-58/HB 228.)

The 2009 amendment, effective July 1, 2009, in paragraph (2), substituted "Department of Human Services, the Department of Community Health, or the Department of Behavioral Health and Developmental Dis-

abilities" for "Department of Human Resources", substituted "any such department" for "the department", and substituted "such department" for "the department".

JUDICIAL DECISIONS

Holdings of Regents of the University System. — State is equitable and beneficial owner of all property now vested in Regents of the University System of Georgia, and the corporation by that name is the holder only of legal title; but it does not follow that the corporation may not enter into any contract which in its reasonable discretion is necessary for the usefulness of the institution, or may not incur liabilities in its own name for

that purpose. Being a distinct legal entity, any such liability would be a debt of the corporation and not a debt of the state. *State v. Regents of Univ. Sys.*, 179 Ga. 210, 175 S.E. 567 (1934).

Cited in *Williams v. McIntosh County*, 179 Ga. 735, 177 S.E. 248 (1934); *Southeastern Pipe Line Co. v. Garrett ex rel. Le Sueur*, 192 Ga. 817, 16 S.E.2d 753 (1941); *State v. Davison*, 198 Ga. 27, 31 S.E.2d 225 (1944).

50-16-3.1. State authorities prohibited from selling real property; exceptions.

(a) As used in this Code section, the term “state authority” means:

(1) The Georgia Building Authority (Hospital) provided for in Article 2 of Chapter 7 of Title 31;

(2) The Jekyll Island—State Park Authority provided for in Part 1 of Article 7 of Chapter 3 of Title 12; or

(3) The Stone Mountain Memorial Association provided for in Part 4 of Article 6 of Chapter 3 of Title 12.

(b) The provisions of any other laws of this state to the contrary notwithstanding, no state authority shall be authorized to sell real property; provided, however, this prohibition shall not apply to the sale or other disposition of real property by a state authority when such real property is necessary for a public road right of way. (Code 1981, § 50-16-3.1, enacted by Ga. L. 1988, p. 1635, § 1.)

50-16-4. Use and keeper of capitol buildings and grounds.

The use of the capitol building and grounds shall be limited to departments of the state government and to state and national political organizations, and the keeper of public buildings and grounds shall not grant the use of either the capitol buildings or grounds for any other purposes, except that the Georgia Building Authority as keeper of public buildings and grounds is authorized to provide space in the capitol building for use as a vending stand, as described by Article 2 of Chapter 15 of Title 34, for the use of state officials and employees and their invited guests. (Ga. L. 1882-83, p. 18, §§ 1-16; Ga. L. 1884-85, p. 27, § 1; Ga. L. 1888, p. 14, §§ 1-3; Ga. L. 1892, p. 95, §§ 1, 2; Civil Code 1895, § 1017; Civil Code 1910, § 1284; Code 1933, § 91-105; Ga. L. 1961, p. 218, § 1; Ga. L. 2000, p. 1137, § 9.)

Cross references. — Assignment of office space in state capitol, §§ 28-4-2, 50-16-61. Prohibition against panhandling, solicitation, or vending in capitol building and on capitol grounds, § 50-9-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, “Article 2” was substituted for “Article 3” in this Code section.

OPINIONS OF THE ATTORNEY GENERAL

Use as fall-out shelter. — Department of Administrative Services is precluded by law from allowing the use of capitol grounds for a fall-out shelter. 1962 Op. Att’y Gen. p. 471.

50-16-5. Defacing or injuring capitol building or grounds.

If any person shall mar, deface, or in any way injure the capitol building, the approaches thereto, the trees, shrubbery, or grounds belonging to same, or any of the furniture, fixtures, or property therein, he shall be guilty of a misdemeanor. (Ga. L. 1892, p. 100, § 1; Penal Code 1895, § 222; Penal Code 1910, § 219; Code 1933, § 91-9901.)

Cross references. — Criminal penalty for interference with government property, § 16-7-24.

50-16-5.1. Commission on the Preservation of the State Capitol.

(a) The General Assembly makes the following findings:

(1) The Georgia capitol is a unique national and state treasure;

(2) The United States government has recognized the capitol's significance by designating it a National Historic Landmark, the nation's highest level of recognition; and

(3) The Commission on the Preservation of the State Capitol would assist in the protection of this important state building by the development of a master plan for the state capitol, which would include the history of the building, its existing conditions, its evolution, and a plan for its future that would provide an integrated design. The Commission on the Preservation of the State Capitol could also encourage the making of gifts and grants to the capitol.

(b) For purposes of this Code section, the term "commission" means the Commission on the Preservation of the State Capitol created under subsection (c) of this Code section.

(c) The Commission on the Preservation of the State Capitol is created to advise the Governor and the Legislative Services Committee on matters relating to the preservation of the architectural and historical character of the state capitol.

(d) The commission shall consist of nine members, one of whom shall be the director of the Georgia Capitol Museum, four of whom shall be appointed by the Governor, two of whom shall be appointed by the President of the Senate, and two of whom shall be appointed by the Speaker of the House of Representatives. The members shall serve at the pleasure of their appointing authority. The commission shall also consist of the following four ex officio members:

(1) The Secretary of State;

(2) The executive director of the Georgia Building Authority;

- (3) The executive director of the Georgia Council for the Arts; and
- (4) The state historic preservation officer of the Department of Natural Resources.

(e) The commission shall have the following powers and duties:

- (1) To develop a master plan for the Georgia state capitol;
- (2) To make such other studies, reports, and recommendations as it deems advisable with respect to the restoration, rehabilitation, preservation, improvement, and utilization of the capitol buildings and grounds;
- (3) To advise the Georgia Building Authority on the specialized maintenance needs of the capitol to assure continued preservation of historically and architecturally important spaces in the building;
- (4) To advise the Georgia Building Authority in the development of plans and specifications for all projects which should be approved, such projects to be carried out as provided in the master plan, including assisting the authority in the selection of qualified architects engaged for these purposes;
- (5) To provide, in concert with the Georgia Building Authority, the director of the Georgia Capitol Museum, and other agencies of the state, as appropriate, an interpretive program which explores the architectural, historic, artistic, social, political, and cultural themes associated with the capitol;
- (6) To encourage the making of gifts and grants to the state to assist the commission in the performance of its powers, duties, and responsibilities and for the implementation of master plan projects or other recommendations of the commission as may be approved by the Governor and the General Assembly;
- (7) To provide advice and guidance to the director of the Georgia Capitol Museum with respect to the care, conservation, and exhibition of the collections as may be housed in the capitol and to develop and promote additional exhibits to be displayed at the capitol from time to time when the General Assembly is not in session;
- (8) To render such other advice and assistance as the Governor, President of the Senate, and Speaker of the House of Representatives may from time to time request; and
- (9) To hire, staff, and develop an annual work program and budget for carrying out phases of the master plan.

(f) The commission shall be assigned to the office of the Governor for administrative purposes only and members shall receive the same per diem and expenses provided for state boards and commissions under Code

Section 45-7-21. (Code 1981, § 50-16-5.1, enacted by Ga. L. 1993, p. 1541, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, “Georgia Capitol Museum” was substituted for “Georgia

State Museum of Science and Industry” in the introductory language of subsection (d) and paragraphs (e)(5) and (e)(7).

50-16-5.2. Georgia Art Policy Committee created; composition; terms; annual meetings; expense allowance; powers and duties.

Repealed by Ga. L. 2006, p. 149 § 2/HB 978, effective July 1, 2006.

Editor’s notes. — This Code section was based on Code 1981, § 50-16-5.2, enacted by Ga. L. 2000, p. 1332, § 2.

50-16-6. Janitors and watchmen of public buildings and grounds to make arrests, prevent abuse, suppress disorderly conduct, and protect property.

The janitors and watchmen employed by the keeper of public buildings and grounds are authorized, under rules prescribed by the Governor and keeper of public buildings, to make arrests and convey offenders to the police headquarters of Atlanta to be tried by the proper court. It shall be their duty to prevent the abuse of the capitol building, to suppress disorderly conduct therein, and to protect the building and its contents. (Ga. L. 1892, p. 100, § 3; Penal Code 1895, § 224; Penal Code 1910, § 221; Code 1933, § 91-107.)

Cross references. — Appointment of nonuniformed investigators to protect state property, § 35-1-6. Arrest powers of security

guards employed by Georgia Building Authority, § 50-9-9.

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Night watchman for state sanatorium should be deputized by the sheriffs of the two counties in which the property is located in order to have the power to arrest for offenses committed thereon. 1945-47 Op. Att’y Gen. p. 539.

O.C.G.A. § 50-16-6 geographically re-

stricted. — This section is restricted to watchmen employed by keeper of public buildings located in Atlanta since the law requires that when an arrest is made the offender shall be conducted to the police headquarters in Atlanta. 1945-47 Op. Att’y Gen. p. 539.

50-16-7. Improvement of real estate held by state in fee simple with reversionary interest in federal government or under long-term federal license.

(a) As used in this Code section, the term “long-term federal license” means a license under which the state holds real estate belonging to the federal government for a period of ten years or longer.

(b) Any real estate held by the state in fee simple or under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license with a reversionary interest in the federal government may be improved with funds appropriated for a state department, provided the commissioner of the department affected and the Office of Planning and Budget, consisting of the Governor and state auditor, consent to the use of such funds if the amount of funds to be appropriated exceeds \$1,000.00. If the amount of the improvement funds to be appropriated is \$1,000.00 or less, the commissioner of the department shall have the authority to approve the appropriation without the approval of the Office of Planning and Budget; provided, however, nothing in this Code section shall prevent or prohibit a state department from constructing with appropriated state funds a public ramp for the launching and retrieving of watercraft and other facilities for use in connection therewith, including, but not limited to, paved parking areas and access roads, upon real estate owned by the state adjoining lakes, reservoirs, rivers, or other bodies of water available for free use by the public, the title to which real estate is burdened by a flood easement, license, permit, or reservation running in favor of an electric utility company regulated by the state or the United States, or any public corporation or authority declared by law to be an instrumentality of the state or the United States, or any agency or department of the United States; provided, further, nothing in this Code section shall prevent the expenditure of appropriated state funds to construct access roads or ways for ingress and egress or the construction or placement of utilities in, on, through, over, or under real property in which the state holds a legal interest or estate less than fee simple if the roads, ways, or utilities are constructed to serve facilities located on or to be located on real property held by the state in fee simple or under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license with a reversionary interest in the federal government. (Ga. L. 1961, p. 47, §§ 1, 2; Ga. L. 1972, p. 927, § 1; Ga. L. 1977, p. 872, § 1.)

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Incidental expenditures on leased property. — Legislature did not intend that this section be so strictly construed that the state is powerless to make incidental expenditures on leased property, which expenditures are dictated by practical business considerations and which, if not made by the state, would deny the state the maximum benefits of the use of the premises or would result in considerably greater loss to the state before the premises could be used for the purposes intended. 1963-65 Op. Att’y Gen. p. 306.

Expenditures on “permanent facilities.” — State could not spend money on leased property to construct “permanent facili-

ties”; only structures which as a practical matter may be removed from the premises as a unit, or dismantled and removed without substantial loss or damage may be considered as temporary or removable structures. 1965-66 Op. Att’y Gen. No. 66-70.

State acceptance of property lease. — State may accept lease on property where no valuable permanent improvements are to be placed on land, and a policy of title insurance is procured. 1954-56 Op. Att’y Gen. p. 655.

Restrictions on county-owned real estate. — State funds appropriated by a state agency from the Governor’s Emergency Fund may

be utilized for improvements to real estate held by the state in fee simple, but may not be used for such improvements to real property owned by individual counties; the expenditures for improvements to state-owned property must be consistent with and authorized by the enumerated powers of the governmental agency proposing the improvements. 1974 Op. Att'y Gen. No. 74-158.

Construction of radio beacons. — Although the Department of Industry and Trade may lawfully accept a grant from the Governor's Emergency Fund, such grant may not be utilized, by contract or otherwise, for the purpose of constructing a radio beacon at a municipal airport. 1967 Op. Att'y Gen. No. 67-322.

Property not owned by state. — The authorization to participate in the operation of a welcome center would not be inclusive of an authorization to utilize state funds for the construction of a welcome center on property not owned by the state or otherwise permitted under this section. 1973 Op. Att'y Gen. No. 73-30.

Leased property of other branch of state government. — Regents may legally expend appropriated state funds for improvements on property leased from another branch of state government, the title to which is held by the state. 1967 Op. Att'y Gen. No. 67-450.

Title to land required. — State must have title to land before permanent improve-

ments may be made thereon. 1954-56 Op. Att'y Gen. p. 574.

Reversionary clause in deed. — State funds not expended for permanent improvements where reversionary clause in deed. No state funds can be expended to place any permanent improvements on property transferred to the state as long as a reversionary clause is in the deed of conveyance. 1954-56 Op. Att'y Gen. p. 573.

State should not accept a deed of real property where deed contains a reversionary clause. 1963-65 Op. Att'y Gen. p. 755.

Improvements to leased property. — State funds may be used for improvement of leased property where improvements are of such a nature as to be easily removable and lease provides that state may remove such improvements upon termination or when state no longer requires use of property. 1962 Op. Att'y Gen. p. 398.

Property held in fee simple or quitclaim deed. — State funds may be used for property held by state in fee simple or under quitclaim deed with a reversionary interest in United States government upon approval of proper state officials. 1962 Op. Att'y Gen. p. 396.

Acceptance of property with reversionary clause. 1960-61 Op. Att'y Gen. p. 386.

Department of Natural Resources cannot accept deed from city containing reversionary clause for land on which state funds are to be used. 1962 Op. Att'y Gen. p. 395.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 259 et seq.

ALR. — How far is public property subject to mechanics' liens, 26 ALR 326.

50-16-8. Insurance of state property required; self-insurance program authorized.

The Governor shall keep insured all the insurable property of the state including, but not limited to, the public buildings and the contents thereof. The Governor is authorized to draw his warrant upon the state treasury annually for such sums as may be necessary to keep the insurable property of the state adequately protected by insurance. The Governor, in keeping the state's property insured, shall implement a sound program of self-insurance as provided in Code Sections 50-16-9 through 50-16-11 which may include assuming by the state some, or all, of the various risks or hazards under such plan of self-insurance. (Ga. L. 1960, p. 1160, § 1.)

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Comprehensive insurance plan contemplated. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state's insurable property, and not a plan broken up into components of the various state depart-

ments and authorities. 1960-61 Op. Att'y Gen. p. 12.

State authority-owned property comes within purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att'y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Availability of proceeds of insurance on public building for purpose other than restoring or replacing the building damaged or destroyed, 65 ALR 1124.

Right or duty to carry insurance on public property, 100 ALR 600.

50-16-9. Formulation of self-insurance plan for state's properties; incentive programs authorized.

(a) The Department of Administrative Services may formulate and initiate a plan of self-insurance for the state's properties. The department shall cause:

(1) A complete appraisal to be made of all the state's insurable property as to value;

(2) A complete classification to be made of all the state's insurable property by type of risk; and

(3) A determination and recommendation to be made of the amount and extent of self-insurance which the state can assume, the necessary reserves needed, the minimum claim to be paid on each risk, the type of additional or excess insurance coverage that may be required, the premiums to be charged, and any deductibles to be paid by state agencies and authorities.

(b) The department is further authorized to establish incentive programs, including differential premium rates based on participation in loss control programs established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the state insurance and hazard reserve fund provided for in this chapter.

(c) Upon the formulation of a plan of self-insurance based on the foregoing determinations made and submitted by the Department of Administrative Services, the Governor, by executive order, may establish and

effectuate a plan of self-insurance; and the General Assembly from time to time shall provide and maintain by appropriation an insurance reserve fund. (Ga. L. 1960, p. 1160, § 2; Ga. L. 2008, p. 245, § 9/SB 425.)

The 2008 amendment, effective July 1, 2008, designated the prior existing provisions as subsections (a) and (c); in paragraph (a)(3), deleted “and” preceding “the type” near the middle, and added “, the

premiums to be charged, and any deductibles to be paid by the state agencies and authorities” at the end; and added subsection (b).

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Scope of self-insurance plan. — This section contemplates a self-insurance plan for all of the state’s insurable property, including the property owned by the various authorities which have been created by the legislature. 1960-61 Op. Att’y Gen. p. 12.

Use of discretion and judgment in formulation of plan. — This section contemplates that the supervisor of purchases (now commissioner of administrative services) use the supervisor’s (now commissioner’s) best discretion and judgment in the formulation of the self-insurance plan which the supervisor (now commissioner) recommends to the Governor for adoption; and that in formulating such plan of self-insurance the supervisor (now commissioner) analyze the property of each authority and determine what, in the supervisor’s (now commissioner’s) best judgment, is in the best interest of the

particular authority and the people (taxpayers) of Georgia; in formulating the plan it is suggested that the supervisor of purchases (now commissioner) confer with the members of each authority. 1960-61 Op. Att’y Gen. p. 12.

Comprehensive insurance plan. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state’s insurable property, and not a plan broken up into components of the various state departments and authorities. 1960-61 Op. Att’y Gen. p. 12.

Relation to O.C.G.A. §§ 50-16-8 and 50-16-11. — State authority-owned property comes within the purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att’y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 ALR 600.

50-16-10. Formulation of self-insurance plan for public school buildings.

Reserved. Repealed by Ga. L. 2008, p. 245, § 10, effective July 1, 2008.

Editor’s notes. — This Code section was based on Ga. L. 1971, p. 206, § 1.

50-16-11. Employment of personnel to carry out self-insurance plans.

The Department of Administrative Services is authorized and empowered to employ, as a regular member of its staff, persons with expert knowledge, training, and experience in underwriting and planning and such other personnel, including temporary professional insurance engineers and

actuaries, as are necessary to carry out the details provided in Code Section 50-16-9. (Ga. L. 1960, p. 1160, § 3; Ga. L. 2008, p. 245, § 11/SB 425.)

The 2008 amendment, effective July 1, 2008, substituted “persons with” for “a person with” near the beginning, and substituted “Code Section 50-16-9” for “Code Sections 50-16-9 and 50-16-10” at the end.

OPINIONS OF THE ATTORNEY GENERAL

Comprehensive insurance plan. — Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11) contemplate one overall comprehensive plan covering all of the state’s insurable property, and not a plan broken up into components of the various state departments and authorities. 1960-61 Op. Att’y Gen. p. 12.

Relation to O.C.G.A. §§ 50-16-8 and 50-16-9. — State authority-owned property comes within the purview of Ga. L. 1960, p. 1160, §§ 1-3 (see O.C.G.A. §§ 50-16-8, 50-16-9, and 50-16-11). 1960-61 Op. Att’y Gen. p. 12.

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 ALR 600.

50-16-11.1. Commercial property policies for coverage of buildings, contents, and other property owned by community service boards.

The Department of Administrative Services is authorized to assist and coordinate the purchase of a commercial property policy for coverage for the buildings, contents, and other property owned by community service boards. The payment of the premium to the commercial carrier shall be the responsibility of the community service boards. (Code 1981, § 50-16-11.1, enacted by Ga. L. 1994, p. 1717, § 8.)

50-16-12. Authorization for state insurance and hazard reserve fund to retain certain moneys for the payment of liabilities and expenses; deposit of investment funds with Office of Treasury and Fiscal Services.

In order to finance the continuing liability established with other agencies of state government, the state insurance and hazard reserve fund is authorized to retain all moneys paid into the fund as premiums on policies of insurance, all moneys received as interest, and all moneys received from other sources as a reserve for the payment of such liability and the expenses necessary to the proper conduct of such insurance program administered by the fund. Any amounts held by the state insurance and hazard reserve fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the state insurance and hazard reserve fund. The director

of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the state insurance and hazard reserve fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this Code section, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services. (Ga. L. 1972, p. 296, § 1; Ga. L. 2000, p. 1474, § 10.)

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 ALR 600.

50-16-13. Authorization for state insurance and hazard reserve fund to contract for fire protection systems; cost limitation; approval by legislative subcommittees.

The state insurance and hazard reserve fund is authorized to execute contracts with reliable manufacturers of automatic sprinkler systems and other fixed fire protection systems for the installation of approved fire protection systems for all properties of the state, authorities, instrumentalities, bureaus, and commissions which are insured or which may become insured in the future under the state self-insurance program. The cost shall be borne by the state insurance and hazard reserve fund and may not exceed \$100,000.00 in any one fiscal year. The fund shall be the sole judge as to where and to what extent such fire protection systems need to be installed for the protection of lives and property. All expenditures for the installation of fire protection systems and equipment shall be approved by the fiscal affairs subcommittees of the Senate and House of Representatives. (Ga. L. 1974, p. 530, § 1.)

RESEARCH REFERENCES

ALR. — Right or duty to carry insurance on public property, 100 ALR 600.

50-16-14. Authorization of security personnel to deny entrance and remove persons from state property; assistance.

The Georgia Building Authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are authorized and empowered to deny the entrance of any person into or upon any property or building of the authority or the state when the person's activities are intended to disrupt or interfere with the normal

activities and functions carried on in such property or building or have the potential of violating the security of the personnel therein. The authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are authorized and empowered to deny entrance into or upon any such property or building of any person displaying any sign, banner, placard, poster, or similar device. The authority and its security personnel and members of the Georgia State Patrol and Georgia Bureau of Investigation are authorized and empowered to remove any person from any such property or building when the person's activities interfere with or disrupt the activities and the operations carried on in such property or building or constitute a safety hazard to the property or building or the inhabitants thereof. The authority and power provided in this Code section and Code Section 50-16-15 shall also extend to any property or building utilized by the state or any agency thereof. Any law enforcement officer assisting the authority or any of its security personnel or members of the Georgia State Patrol and Georgia Bureau of Investigation shall have the same authority and power bestowed upon the authority by this Code section and Code Section 50-16-15. (Ga. L. 1976, p. 471, § 1; Ga. L. 1978, p. 850, § 1.)

Cross references. — Employment of Building Authority to employ security nonuniformed investigators to protect state guards, § 50-9-9. property, § 35-1-6. Authority of Georgia

JUDICIAL DECISIONS

Constitutionality. — No constitutional infirmity is created by language in this section authorizing exclusion of those persons whom a guard, by the exercise of subjective evaluation, determines has the potential of violating the security of personnel or whose activities are intended to disrupt or interfere with the normal activities and functions carried on in the building. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not facially overbroad nor so vague as to violate first amendment freedoms of assembly or speech. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not overbroad as "sweeping within their prohibitions" that may not be punished under the first and fourteenth amendments. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert.

denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 471, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not violative of due process or equal protection guarantees. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

O.C.G.A. §§ 50-16-14 and 50-16-16 do not violate first amendment guarantees of freedom of speech and the right to assemble peaceably and petition the government for redress of their grievances. *State v. Storey*, 181 Ga. App. 161, 351 S.E.2d 502 (1986), cert. denied, 481 U.S. 1017, 107 S. Ct. 1895, 95 L. Ed. 2d 501 (1987).

Language broadly construed. — The language of this section authorizing denial of entrance into or upon state property to "any person displaying any sign, banner, placard, poster or similar device" is not to be narrowly construed as prohibiting entry merely because such signs or placards are present. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Threat of harm or disruption of operations required. — Actual or imminent threat of harm or of disruption of on-going operations on state property or in buildings hous-

ing state agencies is required. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

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Arrests on state property. — Within the limits of their respective territorial or statutory jurisdiction, local law enforcement authorities may arrest offenders upon state

property for violations of state laws including property under the jurisdiction of the Georgia Building Authority Police. 1992 Op. Att'y Gen. No. 92-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, § 535 et seq.

C.J.S. — 16A C.J.S., Constitutional Law, §§ 378, 379. 81A C.J.S., States, § 261.

50-16-15. Adjutant general authorized to empower contract security guards to make arrests and carry firearms upon and surrounding National Guard facilities.

The adjutant general is authorized to empower service contract security guards employed by the Department of Defense with the power and authority to make summary arrests of persons violating the laws of this state or the United States upon and surrounding any Georgia Air National Guard or Georgia Army National Guard facility. In case of such arrests, the service contract security guard shall as soon as possible deliver the arrested person or persons to the custody of the sheriff of the county wherein the offense was committed. The adjutant general shall also have the power and authority to authorize service contract security guards to carry firearms in the official performance of their duties. (Ga. L. 1976, p. 471, § 2.)

Cross references. — Employment of nonuniformed investigators to protect state

property, § 35-1-6. Duties of adjutant general generally, § 38-2-151.

50-16-16. Penalty for refusal to obey security personnel or law enforcement officer.

Any person who refuses to obey any lawful order of any security personnel or law enforcement officer issued pursuant to Code Section 50-16-14 or 50-16-15 or any person who refuses to vacate any such property or building when requested to do so shall be guilty of a misdemeanor. (Ga. L. 1976, p. 471, § 3; Ga. L. 1982, p. 3, § 50.)

Cross references. — Employment of nonuniformed investigators to protect state property, § 35-1-6.

JUDICIAL DECISIONS

Constitutionality. — Ga. L. 1976, p. 476, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not violative of due process or equal protection guarantees. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

Ga. L. 1976, p. 476, §§ 1 and 3 (see O.C.G.A. §§ 50-16-14 and 50-16-16) are not facially overbroad nor so vague as to violate first amendment freedoms of assembly or

speech. *State v. Boone*, 243 Ga. 416, 254 S.E.2d 367, cert. denied, 444 U.S. 898, 100 S. Ct. 206, 62 L. Ed. 2d 133 (1979).

O.C.G.A. §§ 50-16-14 and 50-16-16 do not violate first amendment guarantees of freedom of speech and the right to assemble peaceably and petition the government for redress of their grievances. *State v. Storey*, 181 Ga. App. 161, 351 S.E.2d 502 (1986), cert. denied, 481 U.S. 1017, 107 S. Ct. 1895, 95 L. Ed. 2d 501 (1987).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Obstructing Justice, § 63.

C.J.S. — 67 C.J.S., Obstructing Justice or Governmental Administration, § 12 et seq.

50-16-17. Rights and remedies of state and other governmental entities relating to property ownership.

(a) Cumulative of any other prerogatives or powers, any unit or instrumentality of government within this state is empowered and authorized to assert any cause of action, initiate any proceeding, seek any remedy, and request or demand any judicial relief which pertains to real property and which is available under the general law of this state to nongovernmental parties in like circumstances. Without limitation this law shall apply to matters in law and equity, matters of general civil procedure, and to special statutory proceedings. This law shall be construed liberally as a remedial law, and it shall be applicable to all claims, whether heretofore or hereafter accruing and regardless of whether proceedings concerning such claims have commenced or may hereafter be commenced. Neither this law nor any actions taken by a governmental unit or instrumentality within its terms shall be deemed or construed as waiving sovereign immunity under state law or waiving any immunities under the Eleventh Amendment of the Constitution of the United States.

(b) For purposes of this Code section, the term “real property” shall have the same meaning as “realty” and “real estate” in Code Section 44-1-2.

(c) For purposes of this Code section, the term “unit or instrumentality of government” shall mean the state, its constituent agencies, associations, authorities, boards, bureaus, commissions, departments, instrumentalities, officers, and public corporations, and all like units and instrumentalities of local government, including, without limitation, counties and municipal corporations, other political subdivisions, their school boards, the boards of independent school systems, authorities and other instrumentalities, and any other entities or instrumentalities of state and local government created under or pursuant to state law and performing governmental functions.

(Code 1981, § 50-16-17, enacted by Ga. L. 1986, p. 316, § 1; Ga. L. 1987, p. 1064, § 1.)

Code Commission notes. — Ga. L. 1986, p. 316, § 1 and Ga. L. 1986, p. 506, § 1 both enacted Code sections designated as 50-16-17. The Code section enacted by the latter Act was redesignated as Code Section 50-16-18 pursuant to Code Section 28-9-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 130 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 2 et seq.

ALR. — Right of one governmental subdivision to sue another such subdivision for damages, 11 ALR5th 630.

50-16-18. Writing off small amounts due to state.

(a) It is the intent of this Code section to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia which generally prohibit gratuities by devising an administrative mechanism which will ensure that any obligation due the state is not pursued when it is manifest that the account is uncollectable or when the costs of pursuing a moderate indebtedness would create a greater obligation on the treasury than the amount claimed and that there will be an established procedure to scrutinize modest debts individually and, when collection appears to be unlikely, to make a formal administrative determination to conserve public moneys which would otherwise be expended for unfruitful collection efforts.

(b)(1) (Repealed effective July 1, 2010) All state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is \$100.00 or any lesser amount unless the agency or department belongs to the Board of Regents of the University System of Georgia or the Technical College System of Georgia in which case the obligation or charge in favor of the institution under the Board of Regents of the University System of Georgia or the institution of the Technical College System of Georgia may be \$3,000.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of \$100.00 or less, or \$3,000.00 or less for the institutions of the Board of Regents of the University System of Georgia or the Technical College

System of Georgia, has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department. This paragraph shall stand repealed and reserved effective July 1, 2010.

(2) On and after July 1, 2010, all state agencies and departments, in order to preserve public funds, shall be authorized to develop appropriate standards that comply with the policies prescribed by the state accounting officer which will provide a mechanism to consider administratively discharging any obligation or charge in favor of such agency or department when such obligation or charge is \$100.00 or any lesser amount. This procedure shall not be available to such agency or department in those instances where the obligor has more than one such debt or obligation in any given fiscal year, and this provision shall be construed in favor of the state agency or department so as not to alter the unquestioned ability of such state agency or department to pursue any debt, obligation, or claim in any amount whatsoever. In those instances where a debt or obligation of \$100.00 or less has been deemed to be uncollectable, the proper individual making such determination shall transmit a recapitulation of the efforts made to collect the debt together with all other appropriate information, which shall include a reasonable estimate of the cost to pursue administratively or judicially the account, together with a recommendation to the commissioner of such state agency or department. In those instances where the commissioner makes a determination that further collection efforts would be detrimental to the public's financial interest, a certificate reflecting this determination shall be executed, and this certificate shall serve as the authority to remove such uncollectable accounts from the financial records of such state agency or department. Such certificates shall be forwarded to the state accounting officer in a manner and at such times as are reflected in the standards developed by the state accounting officer and the state agency or department. (Code 1981, § 50-16-18, enacted by Ga. L. 1986, p. 506, § 1; Ga. L. 2003, p. 313, § 4; Ga. L. 2004, p. 1078, § 1; Ga. L. 2005, p. 694, §§ 10, 11/HB 293; Ga. L. 2006, 686, § 1/HB 1294; Ga. L. 2008, p. 884, § 1-2/HB 1183.)

The 2008 amendment, effective May 14, 2008, designated the existing provisions of subsection (b) as paragraph (b)(1); in paragraph (b)(1), in the first sentence, substituted “shall be authorized” for “are authorized” near the beginning, inserted “or the Department of Technical and Adult Education” near the middle, and inserted “or the institution of the Department of Technical and Adult Education” near the end, in the third sentence, inserted “or the Department of Technical and Adult Education” near the middle, and inserted a comma following “account” near the end, and added the last sentence; and, added paragraph (b)(2).

Code Commission notes. — Ga. L. 1986, p. 316, § 1 and Ga. L. 1986, p. 506, § 1 both enacted Code sections designated Code Section 50-16-17. The Code section enacted by the latter Act was redesignated as Code Section 50-16-18 pursuant to Code Section 28-9-5.

Pursuant to Code Section 28-9-5, in 2008, in paragraph (b)(1), “Technical College System of Georgia” was substituted for “Depart-

ment of Technical and Adult Education” twice in the first sentence and once in the third sentence.

Editor’s notes. — Ga. L. 2003, p. 313, § 6, not codified by the General Assembly, provides that the amendment by that Act shall be repealed in its entirety on June 30, 2008.

Ga. L. 2004, p. 1078, § 2, not codified by the General Assembly, provides that the amendment by that act shall be repealed in its entirety on June 30, 2006.

Ga. L. 2005, p. 694, § 42(c), not codified by the General Assembly, provides that the amendment by that Act shall be repealed in its entirety on June 30, 2006.

Ga. L. 2006, p. 686, § 1, not codified by the General Assembly, amended Ga. L. 2003, p. 313, § 6, so as to delay the repeal of the 2003 amendment to subsection (b) of Code Section 50-16-18 until June 30, 2008.

Ga. L. 2008, p. 884, § 1-1, not codified by the General Assembly, amended Ga. L. 2006, p. 686, § 1, so as to eliminate the repeal of the 2003 amendment by Ga. L. 2003, p. 313 to subsection (b) of this Code section.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 335 et seq.

50-16-19. State development projects; landscape plan requirements.

(a) As used in this Code section, the term “development activity” means the construction of a structure having an area occupied and defined by the exterior of such structure of at least 1,000 square feet or of a parking lot, other than roadway, street, or bridge construction.

(b) Any project for development activity by the state on or after December 31, 2001, shall be designed in such a manner so as to minimize the loss or destruction of trees on the site of such construction and shall include a landscape plan providing, to the greatest extent practicable, for the retention of trees located on the site, for the replacement of trees lost with trees indigenous to the region, and for the planting of new indigenous trees. (Code 1981, § 50-16-19, enacted by Ga. L. 2001, p. 299, § 1.)

Law reviews. — For note on the 2001 enactment of this Code section, see 18 Ga. St. U. L. Rev. 322 (2001).

50-16-20. Timing of official designations in honor of state agency or state officials.

Repealed by Ga. L. 2003, p. 313, § 6, effective June 30, 2005.

Editor's notes. — This Code section was based on Ga. L. 2003, p. 313, § 1.

ARTICLE 2**STATE PROPERTIES CODE****50-16-30. Short title.**

This article shall be known and may be cited as the “State Properties Code.” (Code 1933, § 91-101A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-101a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

50-16-31. Definitions.

As used in this article, the term:

(1) “Acquire,” “acquisition,” and “acquiring” mean the obtaining of real property by any method including, but not limited to, gift, purchase, condemnation, devise, court order, and exchange.

(1.1) “Administrative space” means any space, whether existing or to be constructed, that is required by a state entity for office, storage, or special purposes and that is required for the core mission of such state entity. In order to be required, the space must be necessary for and utilized in either:

(A) The performance of the duties that the state entity is obligated by law to perform; or

(B) The delivery of the services that the state entity is authorized or required by law to provide.

(2) “Commission” means the State Properties Commission created by Code Section 50-16-32. The commission was formerly known as the State Properties Control Commission and is the successor in law to the State Properties Control Commission, State Properties Acquisition Commission, and the Mineral Leasing Commission.

(3) “Deed” means either a fee simple deed without warranty or a quitclaim deed.

(3.1) “Entities” or “entity” means any and all constitutional offices, as well as all authorities, departments, divisions, boards, bureaus, commissions, agencies, instrumentalities, or institutions of the state.

(4) "Lease" means a written instrument under the terms and conditions of which one party (lessor) out of its own estate grants and conveys to another party or parties (lessee) an estate for years retaining a reversion in itself after such grant and conveyance.

(5) "Mineral resources" means, but is not limited to, sand, sulfur, phosphate, oil, and gas.

(6) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; authority; fiduciary; governmental body, instrumentality, or other organization of the state; county of the state; municipal corporation of the state; political subdivision of the state; governmental subdivision of the state; and any other legal entity doing business in the state.

(7) "Power," "empower(ed)," "authority," and "authorized" are synonymous and when each is used it shall include the other, the same as if the other had been fully expressed. When the commission has the power or is empowered, it has the authority and is authorized. "Authorized" and "may" shall imply discretion and not requirement.

(8) "Property" means:

(A) The Western and Atlantic Railroad including all the property associated with the railroad as of December 26, 1969, unless the same has otherwise been provided for by Act or resolution of the General Assembly;

(B) All the property owned by the state in Tennessee other than that property included in subparagraph (A) of this paragraph;

(C) The state owned property facing Peachtree, Cain, and Spring streets in the City of Atlanta, Fulton County, Georgia, upon which the Governor's mansion once stood and which is commonly referred to and known as the "Henry Grady Hotel property" or "old Governor's mansion site property";

(D) Any state owned real property the custody and control of which has been transferred to the commission by executive order of the Governor; and

(E) Any state owned real property the custody and control of which has been transferred to the commission by an Act or resolution of the General Assembly without specific instructions as to its disposition.

(9) "Rental agreement" means a written instrument the terms and conditions of which create the relationship of landlord and tenant. Under such relationship no estate passes out of the landlord and the tenant has only usufruct.

(10) "Revocable license" means the granting, subject to certain terms and conditions contained in a written revocable license agreement, to a

named person or persons (licensee), and to that person or persons only, of a revocable personal privilege to use a certain described parcel or tract of the property to be known as the licensed premises for a named purpose. Regardless of any and all improvements and investments made, consideration paid, or expenses and harm incurred or encountered by the licensee, a revocable license shall not confer upon the licensee any right, title, interest, or estate in the licensed premises, nor shall a revocable license confer upon the licensee a license coupled with an interest or an easement. A revocable license may be revoked, canceled, or terminated, with or without cause, at any time by the licensor (commission).

(11) “Revocable license agreement” means a written instrument which embodies a revocable license and which sets forth the names of the parties thereto and the terms and conditions upon which the revocable license is granted.

(12) “State” means the State of Georgia.

(13) “State agency” or “state agencies” means any department, division, bureau, board, commission, including the State Properties Commission created by Code Section 50-16-32, or agency within the executive branch of state government.

(14) “Terms and conditions” shall include stipulations, provisions, agreements, and covenants. (Code 1933, § 91-102A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 1; Code 1933, § 91-102a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 2005, p. 100, §§ 7, 8/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, the term “state owned” was substituted for “state-owned” in subparagraphs (8)(C) through (8)(E).

JUDICIAL DECISIONS

Cited in Georgia-Pacific Corp. v. Saylor (1980); City of Marietta v. CSX Transp., Inc., Marine Corp., 246 Ga. 133, 269 S.E.2d 24 (1980); 272 Ga. 612, 533 S.E.2d 372 (2000).

50-16-32. Creation, membership, and organization of State Properties Commission; transfer of assets, obligations, responsibilities, funds, personnel, equipment, and facilities from the Department of Administrative Services.

(a) There is created within the executive branch of state government a public body which shall be known as the State Properties Commission and which shall consist of seven members and be composed of the Governor; the Secretary of State; one citizen appointed by the Governor for terms ending on April 1 in each odd-numbered year; the director of the Office of Treasury and Fiscal Services; the state accounting officer; one citizen

appointed by the Speaker of the House of Representatives for terms ending on April 1 in each odd-numbered year; and one citizen appointed by the Lieutenant Governor for terms ending on April 1 in each odd-numbered year. The term of office of the appointed members of the commission is continued until their successors are duly appointed and qualified. The Lieutenant Governor may serve as an appointed citizen member.

(b) The Governor shall be the chairperson of the commission, the state accounting officer shall be its vice chairperson, and the Secretary of State shall be its secretary. Four members of the commission shall constitute a quorum. No vacancy on the commission shall impair the right of the quorum to exercise the powers and perform the duties of the commission. With the sole exception of acquisitions of real property, which acquisitions shall require four affirmative votes of the membership of the commission present and voting at any meeting, the business, powers, and duties of the commission may be transacted, exercised, and performed by a majority vote of the commission members present and voting at a meeting when more than a quorum is present and voting or by a majority vote of a quorum when only a quorum is present and voting at a meeting. An abstention in voting shall be considered as that member not being present and not voting in the matter on which the vote is taken. No person may be appointed, elected, or serve on the commission who is a member of the legislative or judicial branch of government. In the event any ex officio member is determined to be in either the legislative or judicial branch of government, the General Assembly declares that it would have passed this article without such ex officio position on the commission and would have reduced the quorum and vote required of the commission on all actions accordingly.

(c) Meetings shall be held on the call of the chairperson, vice chairperson, or two commission members whenever necessary to the performance of the duties of the commission. Minutes or transcripts shall be kept of all meetings of the commission and in the minutes or transcripts there shall be kept a record of the vote of each commission member on all questions, acquisitions, transactions, and all other matters coming before the commission. The secretary shall give or cause to be given to each commission member, not less than three days prior to the meeting, written notice of the date, time, and place of each meeting of the commission.

(d) The commission shall adopt a seal for its use and may adopt bylaws for its internal government and procedures.

(e) Members of the commission who are also state officials shall receive only their traveling and other actual expenses incurred in the performance of their official duties as commission members. Citizen members shall receive the same expense allowance per day as that received by a member of the General Assembly for each day any such member of the commission is in attendance at a meeting or carrying out official duties of the commission inside or outside the state, plus reimbursement for actual

transportation costs while traveling by public carrier or the legal mileage rate for the use of a personal automobile inside or outside the state while attending meetings or carrying out their official duties as members of the commission.

(f) The commission shall receive all assets of and the commission shall be responsible for any contracts, leases, agreements, or other obligations of the Department of Administrative Services under the former provisions of Article 2 of Chapter 5 of this title, the “State Space Management Act of 1976.” The commission is substituted as a party to any such contract, agreement, lease, or other obligation and the same responsibilities respecting such matters as if it had been the original party and is entitled to all prerogatives, benefits, and rights of enforcement by the commissioner of administrative services and Department of Administrative Services. Appropriations and other funds of the Department of Administrative Services encumbered, required, or held for functions transferred to the commission shall be transferred to the commission as provided for in Code Section 45-12-90, relating to disposition of appropriations for duties, purposes, and objects which have been transferred. Personnel, equipment, and facilities previously employed by the Department of Administrative Services for such transferred functions shall likewise be transferred to the commission. On April 12, 2005, all personnel positions authorized by the Department of Administrative Services in fiscal year 2006 for such functions shall be transferred to the commission, and all employees of the department whose positions are transferred by the Department of Administrative Services to the commission shall become employees of the commission in the unclassified service as defined by Code Section 45-20-6. (Code 1933, § 91-103A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 249, § 1; Ga. L. 1965, p. 663, § 2; Code 1933, § 91-104a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1977, p. 685, § 1; Ga. L. 1978, p. 1047, § 1; Ga. L. 1987, p. 347, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1995, p. 1066, § 1; Ga. L. 1999, p. 653, § 1; Ga. L. 2005, p. 100, § 9/SB 158; Ga. L. 2005, p. 694, § 12/HB 293.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, “On April 12, 2005” was substituted for “Upon the effective date of this Code section” at the beginning of the fifth sentence in subsection (f).

Pursuant to Code Section 28-9-5, in 2006, the single quotes around “State Space Management Act of 1976.” were changed to double quotes in subsection (f).

JUDICIAL DECISIONS

Execution of functions. — Most functions of commission must be performed by exec-

utive branch of government. *Murphy v. State*, 233 Ga. 681, 212 S.E.2d 839 (1975).

50-16-33. Assignment of State Properties Commission to Department of Administrative Services.

Reserved. Repealed by Ga. L. 2005, p. 100, § 21/SB 158, effective April 12, 2005.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1015, § 410.

50-16-34. Powers and duties of State Properties Commission generally.

The commission, in addition to other powers and duties set forth in other Code sections of this article, shall have the power and duty to:

- (1) Inspect, control, manage, oversee, and preserve the property;
- (2) Maintain at all times a current inventory of the property;
- (3) Authorize the payment of any tax or assessment legally levied by the State of Tennessee or any governmental subdivision thereof upon any part of the property situated within the State of Tennessee;
- (4) Prepare lease or sale proposals affecting the property for submission to the General Assembly;
- (5) Subject to the limitation contained in this article, determine all of the terms and conditions of each instrument prepared or executed by it;
- (6) Have prepared, in advance of advertising for bids as provided for in Code Section 50-16-39, a thorough report of such data as will enable the commission to arrive at a fair valuation of the property involved in such advertisement; and to include within the report at least two written appraisals of the value of the property, which appraisals shall be made by a person or persons familiar with property values in the area where the property is situated; provided, however, that one of the appraisals shall be made by a member of a nationally recognized appraisal organization; and provided, further, that in the case of the Western and Atlantic Railroad, the appraisal, other than the one required to be made by a member of a nationally recognized appraisal organization, may be the latest valuation report of the Western and Atlantic Railroad prepared by the Interstate Commerce Commission;
- (7) Contract with any person for the preparation of studies or reports as to:
 - (A) The value of such property including, but not limited to, sale value, lease value, and insurance value;
 - (B) The proper utilization to be made of such property; and
 - (C) Any other data necessary or desirable to assist the commission in the execution and performance of its duties;

(8) Insure the improvements on all or any part of the property against loss or damage by fire, lightning, tornado, or other insurable casualty; and insure the contents of the improvements against any such loss or damage;

(9) Inspect as necessary any of the property which may be under a lease, rental agreement, or revocable license agreement in order to determine whether the property is being kept, preserved, cared for, repaired, maintained, used, and operated in accordance with the terms and conditions of the lease, rental agreement, or revocable license agreement and to take such action necessary to correct any violation of the terms and conditions of the lease, rental agreement, or revocable license agreement;

(10) Deal with and dispose of any unauthorized encroachment upon, or use or occupancy of, any part of the property, whether the encroachment, use, or occupancy is permissive or adverse, or whether with or without claim of right therefor; to determine whether the encroachment, use, or occupancy shall be removed or discontinued or whether it shall be permitted to continue and, if so, to what extent and upon what terms and conditions; to adjust, settle, and finally dispose of any controversy that may exist or arise with respect to any such encroachment, use, or occupancy in such manner and upon such terms and conditions as the commission may deem to be in the best interest of the state; to take such action as the commission may deem proper and expedient to cause the removal or discontinuance of any such encroachment, use, or occupancy; and to institute and prosecute for and on behalf of and in the name of the state such actions and other legal proceedings as the commission may deem appropriate for the protection of the state's interest in or the assertion of the state's title to such property;

(11) Settle, adjust, and finally dispose of any claim, dispute, or controversy of any kind whatsoever arising out of the terms and conditions, operation, or expiration of any lease of the property or grant of rights in the property;

(12) Negotiate and prepare for submission to the General Assembly amendments to any existing lease, which amendments shall not, for the purposes of paragraph (4) of this Code section and Code Section 50-16-39, be interpreted as lease proposals or proposals to lease, provided:

(A) That the lessee of the lease as it is to be amended shall be either the lessee, a successor, an assignee, or a sublessee as to all or a portion of the property described in the lease as first executed or as heretofore amended; and

(B) That unless otherwise provided in the lease as first executed or as heretofore amended:

(i) The commission shall prepare each amendment in at least four counterparts all of which shall immediately be signed by the lessee, whose signature shall be witnessed in the manner required by the applicable law for public recording of conveyances of real estate. The signing shall constitute an offer by the lessee and shall not be subject to revocation by the lessee unless it is rejected by the General Assembly or the Governor as provided in this Code section. A resolution containing an exact copy of the amendment, or to which an exact copy of the amendment is attached, shall be introduced in the General Assembly in either the House of Representatives, the Senate, or both, if then in regular session, or, if not in regular session at such time, at the next regular session of the General Assembly. The resolution, in order to become effective, shall receive the same number of readings and, in both the House of Representatives and the Senate, go through the same processes and procedures as a bill;

(ii) If either the House of Representatives or the Senate fails to adopt (pass) the resolution during the regular session by a constitutional majority vote in each house, the offer shall be considered rejected by the General Assembly;

(iii) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate but is not approved by the Governor, the offer shall be considered rejected by the Governor;

(iv) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate and is approved by the Governor, whenever in the judgment of the chairperson of the commission all of the precedent terms and conditions of the amendment and the resolution, if there are any, have been fulfilled or complied with, the chairperson of the commission, in his or her capacity as Governor of the state, shall execute and deliver to the lessee the amendment for and on behalf of and in the name of the state. The Governor's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State shall also affix the great seal of the state to the amendment; and

(v) On or before December 31 in each year the executive director of the State Properties Commission shall submit a report describing all amendments negotiated during that year or under negotiation at the date of the report to the chairmen of the Senate Finance Committee and the State Institutions and Property Committee of the House;

(13) Exercise such other powers and perform such other duties as may be necessary or desirable to inspect, control, manage, oversee, and preserve the property;

(14) Do all things and perform all acts necessary or convenient to carry out the powers and fulfill the duties given to the commission in this article;

(15) Perform all terms including, but not limited to, termination, satisfy all conditions, fulfill all requirements, and discharge all obligations and duties contained in all leases or contracts of sale of the property which provide that the commission is empowered to act or shall act for and on behalf of the state (lessor or seller) and which leases or contracts of sale have heretofore been approved and adopted (passed) or authorized by a resolution of the General Assembly or which leases or contracts of sale may be approved and adopted (passed) or authorized by a resolution of the General Assembly with the latter resolution being approved by the Governor;

(16) Perform all terms, satisfy all conditions, fulfill all requirements, discharge all obligations, and otherwise implement the disposition of real property for and on behalf of the state when the General Assembly so provides in any enactment, including Acts or resolutions, authorizing or directing a disposition of real property of the state or of any instrumentality of the state; and

(17) Provide or perform acquisition related services to or for all state entities. (Code 1933, § 91-104A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, § 3; Ga. L. 1970, p. 455, § 1; Code 1933, § 91-105a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1974, p. 1035, § 1; Ga. L. 1974, p. 1040, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1979, p. 816, §§ 1, 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 1408, § 1; Ga. L. 1985, p. 1423, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1988, p. 554, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 2005, p. 100, § 11/SB 158; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2009, p. 303, § 11/HB 117.)

The 2009 amendment, effective April 30, 2009, substituted "Senate Finance Committee" for "Finance and Public Utilities Committee of the Senate" in subparagraph (12)(B)(v). See the Editor's note for intent.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "and" was deleted following division (12)(B)(iii) and, in division (12)(B)(v), "Executive Director" was changed to "executive director", a comma was deleted after "date of the report", "Chairman" was changed to "chair-

men", and "Property" was changed to "Properties".

Editor's notes. — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

JUDICIAL DECISIONS

Primary function of commission is acquisition of property on behalf of the state through condemnation or otherwise.

Murphy v. State, 233 Ga. 681, 212 S.E.2d 839 (1975).

Execution of functions. — Most functions

of commission must be performed by executive branch of government. *Murphy v. State*, 233 Ga. 681, 212 S.E.2d 839 (1975).

Power over Western and Atlantic Railroad right-of-way. — Because there can be no adverse possession or implied dedication of state property to a municipal corporation,

which is a creature of the state, a city could not acquire a right to use pedestrian crossings over the Western & Atlantic Railroad right-of-way without the state's express consent. *City of Marietta v. CSX Transp., Inc.*, 272 Ga. 612, 533 S.E.2d 372 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 118, 126. 72 Am. Jur. 2d, States, Territories, and Dependencies, § 66.

C.J.S. — 73B C.J.S., Public Lands, §§ 249 et seq., 287 et seq. 81A C.J.S., States, §§ 256, 263 et seq.

ALR. — Constitutionality and construction of statutes relating to grazing and pasturing sheep or goats on public land, 70 ALR 410.

50-16-34.1. Acquisition of property within railroad lines abandoned as operating rail lines.

(a) The State Properties Commission is empowered and may acquire from a railroad company the real property, including the right of way, and any other properties, personal or otherwise, associated therewith, encompassed within any railroad line that has been abandoned as an operating rail line by said railroad company if the commission first determines that preserving ownership of the said railroad corridor, in whole or in part, may be useful for the present or future needs of public transportation in this state.

(b) Such an acquisition as described in subsection (a) of this Code section shall be in the name of the state, custody in the commission, a "property" similar to the state owned properties described in subparagraphs (A), (B), and (C) of paragraph (8) of Code Section 50-16-31, and may be made by the commission without a request to acquire from another state agency, or without a request from another state agency, state authority, or other instrumentality of the state to provide or perform acquisition related services.

(c) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission, acting for and on behalf of and in the name of the state, is empowered and may deed, lease, rent, or license any such acquired property to any state authority or other instrumentality of the state for public transportation use.

(d) Except as otherwise provided for in this Code section, the powers set forth in subsections (a), (b), and (c) of this Code section are cumulative, and not in derogation, of other powers of the commission as set forth in the "State Properties Code."

(e) The powers set forth in subsections (a), (b), and (c) of this Code section are intended to be exercised independently of any power or action by any other state agency, state authority, or other unit or instrumentality of government, but said powers are not intended to repeal similar or related powers in any other state agency, state authority, or other unit or instrumentality of government. (Code 1981, § 50-16-34.1, enacted by Ga. L. 1989, p. 1238, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 65 Am. Jur. 2d, Railroads, § 58 et seq.

C.J.S. — 73B C.J.S., Public Lands, §§ 251, 252.

50-16-35. State Property Officer; employment of personnel by the commission; merit system; rights under Employees' Retirement System of Georgia.

(a)(1) The Governor shall appoint a state property officer who shall serve as the executive director of the commission. The state property officer shall:

(A) Advise the Governor on opportunities to achieve the goal of state-wide real property management;

(B) Develop policies and procedures for state-wide real property management;

(C) Maintain a state-wide real property management system that has consolidated real property, building, and lease information for state entities;

(D) Develop and maintain a centralized repository of comprehensive space needs for all state entities including up-to-date space and resource utilization, anticipated needs, and recommended options;

(E) With the advice and counsel of state entities, board members, and industry groups, provide state-wide policy leadership, recommending legislative, policy, and other similar changes and coordinating master planning to guide and organize capital asset management;

(F) As needed, secure portfolio management expertise to accomplish the desired policy outcomes;

(G) Seek the cooperation of all state entities to increase the effectiveness of the portfolio management approach; and

(H) Provide assistance to all entities in achieving space and real property reporting requirements, in accordance with state law, in the acquisition and disposition of real property and leases, and in evaluating compliance and operational practices.

(2) The commission is authorized to employ such other employees, on either a full-time or part-time basis, as may be necessary to discharge the duties of the commission. The executive director shall supervise and conduct the activities of the commission under the commission's direction. Unless the commission or chairperson otherwise directs, the executive director may execute and attest on behalf of the commission any instrument in furtherance of an activity authorized by the commission. Unless the commission, chairperson, or secretary otherwise instructs, the executive director may report the minutes of the commission, keep and affix its seal, attest its instruments, and keep and certify its records.

(b) The commission is authorized to promulgate a merit system of employment under which the executive director and such other employees shall be selected and promoted on the basis of merit.

(c) The executive director and all other employees of the commission are authorized to be members of the Employees' Retirement System of Georgia. All rights, credits, and funds in the retirement system which are possessed by any person at the time of his employment with the commission are continued and preserved, it being the intention of the General Assembly that the person shall not lose any rights, credit, or funds to which he may be entitled prior to being employed by the commission. (Code 1933, § 91-106A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-115a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1995, p. 1066, § 2; Ga. L. 2005, p. 100, § 12/SB 158.)

Code Commission notes. — Pursuant to inserted following "credit" in the second Code Section 28-9-5, in 1986, a comma was sentence of subsection (c).

50-16-36. Maintenance of records by State Properties Commission; open to public inspection.

The commission shall cause all of its records including, but not limited to, minutes or transcripts, reports, studies, forms of instruments, bidding papers, notices, advertisements, invitation for bids, bids, executed instruments, and correspondence to be kept and maintained permanently. Such records shall be open to public inspection and may be inspected by any citizen of the state during usual business hours unless the same are being used by the commission or by its employees in the performance of its or their duties in reference thereto. (Code 1933, § 91-112A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-116a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 7.

50-16-37. Adoption of rules and regulations by State Properties Commission; penalty for violation.

(a) The commission is authorized to adopt, after reasonable notice and hearing thereon, such rules and regulations as it may deem appropriate in exercising its powers and performing its duties under this article. The rules and regulations so adopted by the commission shall have the same dignity and standing as if their provisions were specifically stated in this article.

(b) Any person who violates any rule or regulation adopted by the commission or who procures, aids, or abets therein shall be guilty of a misdemeanor. (Code 1933, § 91-107A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-117a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

50-16-38. All state entities to acquire real property through commission; exceptions; procedure for handling acquisition requests; funds for acquisitions.

(a) Except for all acquisitions of real property by the Department of Transportation and the Board of Regents of the University System of Georgia, and except for the Department of Natural Resources acquiring by gift parcels of real property, not exceeding three acres each, to be used for the construction and operation thereon of boat-launching ramps, and except for acquisitions of real property by the Technical College System of Georgia in connection with student live work projects funded through moneys generated as a result of the sale of such projects, donations, or student supply fees, and except for acquisitions of real property by the commission resulting from transfers of custody and control of real property to the commission by executive order of the Governor or by Act or resolution of the General Assembly, and except as otherwise provided by law, and except as otherwise required by the nature of the transaction conveying real property to the state or any entity thereof:

(1) All state entities shall acquire real property through the commission; and

(2) The title to all real property acquired shall be in the name of the state, except for state authorities which shall hold title in their own name. The conveyance shall have written or printed in the upper right-hand corner of the initial page thereof the name of the state entity for which acquired who is the custodian thereof.

(b) The commission is authorized to establish, and amend when the commission deems it necessary, a procedure to facilitate the handling by the commission of requests for acquisition of real property.

(c) The state entity requesting acquisition of real property shall provide all of the funds necessary to acquire the real property. (Code 1933,

§ 91-112a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1988, p. 1252, § 6; Ga. L. 2005, p. 100, § 13/SB 158; Ga. L. 2008, p. 335, § 10/SB 435.)

The 2008 amendment, effective July 1, 2008, substituted "Technical College System of Georgia" for "Department of Technical and Adult Education" near the middle of the introductory language of subsection (a).

Cross references. — Authority of department to convey property for purpose of constructing and operating boat-launching ramps thereon, § 50-16-45.

OPINIONS OF THE ATTORNEY GENERAL

Compliance with Environmental Policy Act. — State Properties Commission may require state agencies to demonstrate compliance with the Environmental Policy Act,

O.C.G.A. Ch. 16, T. 12, before acquiring real property for activities which will be subject to the Act. 1992 Op. Att'y Gen. No. 92-5.

JUDICIAL DECISIONS

Cited in *Busbee v. Continental Ins. Co.*, 526 F. Supp. 1243 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S. — 73B C.J.S., Public Lands, § 251.

50-16-39. Public competitive bidding procedure for sales and leases; acceptance or rejection of bids by commission, General Assembly, or Governor; execution of leases and deeds.

(a) Any proposal to lease, other than a lease of mineral resources provided for in Code Section 50-16-43, or sell any part of the property pursuant to the power granted by paragraph (4) of Code Section 50-16-34 shall be initiated and carried out in accordance with this Code section.

(b) Any such lease or sale shall be made upon public competitive bidding and the invitation for bids shall be advertised once a week for four consecutive weeks in the legal organ and in one or more newspapers of general circulation in the county or counties wherein is situated the property to be bid upon and in the legal organ of Fulton County, Georgia. Prior to such advertising, the commission shall prepare a proposed form of lease or contract of sale and deed and appropriate instructions which shall be furnished to prospective bidders under such conditions as the commission may prescribe.

(c) Sealed bids shall be submitted to the secretary of the commission and each bid shall be accompanied by a bid bond or such other security as may be prescribed by the commission. All bids shall be opened in public on the date and at the time and place specified in the invitation for bids. The commission shall formally determine and announce which bid and bidder

it considers to be most advantageous to the state. The commission shall have the right to reject any or all bids and bidders and the right to waive formalities in bidding.

(d) When the commission formally determines and announces which bid and bidder it considers to be most advantageous to the state, the commission shall then prepare the instrument of lease or contract of sale and deed in at least four counterparts, which lease or contract of sale shall be immediately signed by the prospective lessee or purchaser, whose signature shall be witnessed in the manner required by the applicable law for public recording of conveyances of real estate. The signing shall constitute a bid by the prospective lessee or purchaser and shall not be subject to revocation by the prospective lessee or purchaser unless it is rejected by the General Assembly or the Governor as provided in this Code section. A resolution containing an exact copy of the proposed lease or contract of sale and deed, or to which an exact copy of the proposed lease or contract of sale and deed is attached, shall be introduced in the General Assembly in either the House of Representatives, the Senate, or both, if then in regular session, or, if not in regular session at such time, at the next regular session of the General Assembly. The resolution, in order to become effective, shall receive the same number of readings and, in both the House of Representatives and the Senate, go through the same processes and procedures as a bill.

(e) If either the House of Representatives or the Senate fails to adopt (pass) the resolution during the regular session by a constitutional majority vote in each house, the bid shall be considered rejected by the General Assembly.

(f) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate but is not approved by the Governor, the bid shall be considered rejected by the Governor.

(g) If the resolution is adopted (passed) during the regular session by a constitutional majority vote of both the House of Representatives and the Senate and is approved by the Governor, the chairperson of the commission, in his or her capacity as Governor of the state, shall execute and deliver to the purchaser the contract of sale for and on behalf of and in the name of the state, and thereupon both parties to the agreement shall be bound thereby. The Governor's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State shall also affix the great seal of the state to the contract of sale. Whenever, in the judgment of the chairperson of the commission, all of the terms and conditions of the contract of sale, or all of the precedent terms and conditions of the contract of sale, or all of the precedent terms and conditions of the lease have been fulfilled or complied with, the chairperson of the commission in his or her capacity as Governor of the state shall

execute and deliver to the purchaser or lessee the deed or lease for and on behalf of and in the name of the state. The Governor's signature shall be attested by the secretary of the commission in his or her capacity as Secretary of State. The Secretary of State shall also affix the great seal of the state to the deed or lease. (Code 1933, § 91-109A, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1965, p. 663, §§ 4, 5; Code 1933, § 91-106a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2006, p. 72, § 50/SB 465.)

Cross references. — Public competitive bidding for purchases by state, § 50-5-67.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 118, 126. et seq., 287 et seq. 81A C.J.S., States, § 263 et seq.

C.J.S. — 73B C.J.S., Public Lands, §§ 249

50-16-40. Interesse termini provisions not considered.

The commission shall not submit to the General Assembly for its consideration any lease which provides that either:

(1) The lessee will not obtain possession of the leased premises within a period of five years from the commencement date of the regular session of the General Assembly to which the lease is submitted for consideration; or

(2) The term of the lease will not commence within a period of five years from the commencement date of the regular session of the General Assembly to which the lease is submitted for consideration. (Code 1933, § 91-108A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-107a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 49 Am. Jur. 2d, Landlord and Tenant, §§ 14, 62.

50-16-41. Rental agreements without competitive bidding authorized; limitations; commission charged with managing administrative space of all state entities; standards governing the utilization of administrative space; reassignment of administrative space; rules and regulations.

(a) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission is authorized to negotiate, prepare, and enter into in its own name rental agreements whereby a part of the property is

rented, without public competitive bidding, to a person for a length of time not to exceed one year and for adequate monetary consideration (in no instance to be less than a rate of \$250.00 per year), which shall be determined by the commission, and pursuant to such terms and conditions as the commission shall determine to be in the best interest of the state. The same property or any part thereof shall not be the subject matter of more than one such rental agreement to the same person unless the commission shall determine that there are extenuating circumstances present which would make additional one-year rental agreements beneficial to the state; provided, however, the same property or any part thereof shall not after April 24, 1975, be the subject matter of more than a total of three such one-year rental agreements to the same person.

(b) The commission is given the authority and charged with the duty of managing the utilization of administrative space by all state entities, except that the Board of Regents of the University System of Georgia and the Georgia Department of Labor may manage their own space but only for leases that are within the State of Georgia and required for their core mission. The commission shall manage in a manner that is the most cost efficient and operationally effective and which provides decentralization of state government. Such management shall include the authority to assign and reassign administrative space to state entities based on the needs of the entities as determined by standards for administrative space utilization promulgated by the commission pursuant to subsection (g) of this Code section and shall include the obligation to advise the Office of Planning and Budget and state entities of cost-effective, decentralized alternatives.

(c) The management of the utilization of administrative space by the commission shall include entering into any necessary agreements to rent or lease administrative space, whether existing or to be constructed, and shall include administrative space rented or leased by a state entity from the Georgia Building Authority or from any other public or private person, firm, or corporation. When it becomes necessary to rent or lease administrative space, the space shall be rented or leased by the commission and assigned to the state entity or entities requiring the space.

(d) If the commission reassigns all or any portion of any administrative space which is leased or rented by one state entity to another state entity, the state entity to which the administrative space is reassigned shall pay to the commission rental charges, as determined by the commission, for the utilization of the space; and the commission shall, in turn, use the rental charges so paid for the purpose of paying or partially paying, as the case may be, the rent or lease payments due the lessor of the administrative space in accordance with the terms of the lease or rent contract existing at the time of the reassignment of the administrative space. Any such payments to a lessor by the commission shall be on behalf of the state entity which is the lessee of the administrative space reassigned as provided in this Code section.

(e) The management of the utilization of administrative space given to the commission by this Code section shall not be construed to impair the obligation of any contract executed before July 1, 1976, between any state entity and the Georgia Building Authority or between any state entity and any other public or private person, firm, or corporation; and the powers given to the commission by this Code section shall not be implemented or carried out in such a manner as to impair the obligation of any such contract.

(f) The commission is authorized and directed to develop and promulgate standards governing the utilization of administrative space by all state entities which require emphasis on cost effectiveness and decentralization. The standards shall be uniformly applied to all state entities except as otherwise provided by subsection (g) of this Code section, but the standards shall recognize and provide for different types of administrative space required by the various state entities and the different types of administrative space that may be required by a single state entity.

(g) The commission shall be authorized to reassign administrative space to the various state entities in order to bring the utilization of administrative space into conformity with the standards promulgated under subsection (f) of this Code section. Any additional administrative space required by a state entity shall be approved by and obtained through the commission. The commission shall be authorized to grant exceptions to the standards governing the utilization of administrative space when the reassignment of such space would involve unnecessary expenses or the disruption of services being provided by a state entity. The commission shall adopt and promulgate rules and regulations governing the granting of such exceptions, and the rules and regulations shall be uniformly applied by the commission to all state entities requesting an exception to the standards.

(h) For purposes of cost effectiveness and decentralization, the following factors, among other factors, shall be considered:

(1) Dual location of programs within a city should be considered in order to take advantage of possible economies of scale and as a matter of convenience to the general public; or

(2) When all factors are reasonably equivalent, preferences will be given to location of state government programs and facilities in those counties which are determined by the Department of Community Affairs to be the most economically depressed, meaning those 71 tier 1 counties of the state designated as least developed under paragraph (2) of subsection (b) of Code Section 48-7-40.

(i) The commission is authorized and directed to promulgate rules and regulations governing budgetary requirements for administrative space utilized by state entities in cooperation with the Office of Planning and Budget whereby the entities shall be accountable in the budgetary process

for administrative space assigned to and utilized by them. The budgetary requirements may provide for the payment of rent to the commission by state entities or may otherwise provide procedures for the assessment of rent charges for administrative space utilized by state entities or any combination of the foregoing.

(j) In addition to the standards and rules and regulations specifically provided for by this Code section, the commission is authorized to adopt such other rules and regulations as may be required to carry out this Code section efficiently and effectively. (Code 1933, § 91-108a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 2005, p. 100, § 14/SB 158; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, and correct the Code, inserted “of subsection (b)” in paragraph (h)(2).

JUDICIAL DECISIONS

Cited in *Murphy v. State*, 233 Ga. 681, 212 S.E.2d 839 (1975).

RESEARCH REFERENCES

ALR. — Validity of lease of standing timber on state land by entryman upon public land before patent, 83 ALR 1347.

50-16-42. Revocable license agreements without competitive bidding authorized; terms and conditions; telegraph or telephone lines construction provisions unaffected; exception.

(a) Notwithstanding any provisions and requirements of law to the contrary and particularly notwithstanding the requirements of Code Section 50-16-39, the commission shall have the exclusive power to negotiate, prepare, and grant in its own name, without public competitive bidding, a revocable license to any person to enter upon, extend from, cross through, over, or under, or otherwise to encroach upon any of the property under the custody and control of the commission or under the custody and control of any state agency which is subject to the requirements of Code Section 50-16-38.

(b) Any grant of revocable license by the commission to any person shall be in writing and shall contain such terms and conditions as the commission shall determine to be in the best interest of the state, provided that:

(1) Each grant of revocable license, if not revoked prior to, shall stand revoked, canceled, and terminated as of the third anniversary of the date of the revocable license agreement;

(2) Each grant of revocable license shall provide that, regardless of any and all improvements and investments made, consideration paid, or

expenses and harm incurred or encountered by the licensee, the same shall not confer upon the licensee any right, title, interest, or estate in the licensed premises nor confer upon the licensee a license coupled with an interest or an easement, such grant of a revocable license conferring upon the licensee and only the licensee a mere personal privilege revocable by the commission, with or without cause, at any time during the life of the revocable license;

(3) Each grant of revocable license shall be made for an adequate monetary consideration of not less than \$650.00, the adequacy of which shall be determined by the commission in considering the factors involved in each grant, particularly for whose principal benefit the revocable license is being granted; however, if the commission determines that the revocable license directly benefits the state, then any monetary consideration set by the commission shall be deemed adequate; and

(4) Any grant of revocable license shall be subject to approval by any appropriate state regulatory agency that the proposed use of the licensed property meets all applicable safety and regulatory standards and requirements.

(c) This Code section shall not be construed or interpreted as amending, conflicting with, or superseding any or all of Code Section 46-5-1, relating to the construction of telegraph or telephone lines.

(d) This Code section shall not apply to the issuance or renewal of revocable licenses or permits for the construction and maintenance of boat docks on High Falls Lake. Such revocable licenses or permits shall be issued by the Department of Natural Resources pursuant to Code Section 12-3-34. (Code 1933, § 91-109A.1, enacted by Ga. L. 1971, p. 578, § 1; Code 1933, § 91-109.1A, as redesignated by Ga. L. 1972, p. 429, § 1; Code 1933, § 91-109a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1990, p. 1489, § 1; Ga. L. 1993, p. 396, § 2.)

Editor's notes. — Ga. L. 1993, p. 396, § 3, effective July 1, 1993, not codified by the General Assembly, provided: "Under the provisions of law in effect on January 1, 1993, and contained in Code Section 50-16-42, any owner or lessee of property abutting the high-water mark of a state owned lake at a state park who wishes to build a boat dock on such lake must obtain a

revocable license from the state at a cost of not less than \$650.00. It is the purpose of this Act to provide a different method of allowing the construction of boat docks on High Falls Lake at a more reasonable cost to adjoining property owners and to provide a source of funds to operate the High Falls Lake docks permitting program."

JUDICIAL DECISIONS

Cited in *Murphy v. State*, 233 Ga. 681, 212 S.E.2d 839 (1975).

50-16-43. Leasing of state owned lands for exploration and extraction of mineral resources.

(a) The commission for and on behalf of and in the name of the state is authorized to enter into, without the necessity of prior public competitive bidding, a written contract with any person, whereby such person is permitted to explore any state owned lands for indications of mineral resources.

(b) The commission for and on behalf of and in the name of the state is further authorized to lease to any person the mineral resources located on state owned lands and to execute, grant, and convey to such person a lease upon such terms and conditions and permitting such operations as the commission shall determine to be in the best interest of the state including, but not limited to:

(1) The exclusive right to drill, dredge, and mine on the leased premises for mineral resources and to produce and appropriate any and all of the same therefrom;

(2) The right to use, free of charge, mineral resources and water from the leased premises in conducting operations thereon and in treating to make marketable the products therefrom;

(3) The right to construct and use on the leased premises telephone and telegraph facilities, pipelines, and other facilities necessary for the transportation and storage of mineral resources produced therefrom;

(4) The right to construct and use such canals and roads as are necessary for lessee's operations under the lease; and

(5) The right to remove at any time from the leased premises any property placed thereon by lessee.

(c) When any person shall desire to lease any state owned lands pursuant to this Code section, application therefor shall be made to the commission in writing. The application shall include an accurate legal description and a locational, dimensional, and directional sketch acceptable to the commission or a plat of survey of the land sought to be leased and such other information as the commission may require and shall further include a certified check for \$50.00 which shall be deposited with the commission as evidence of the good faith of the applicant, which sum shall only be returned to an applicant who bids for but fails to secure a lease.

(d) When the commission shall desire to lease state owned lands, or upon receipt of an application by any person desiring to lease any state owned lands, the commission shall make an inspection of the land sought to be leased and such geophysical and geological surveys thereof as the commission may deem necessary. The commission, after receiving a report as to the nature, character, surroundings, and mineral resource value of the

land, may offer for lease, through public competitive bidding, all or any portion of the land described in the application. The commission shall cause to be published once a week for two consecutive weeks in the legal organ and in one or more newspapers of general circulation in the county or counties wherein is situated the land to be bid upon and in the legal organ of Fulton County an advertisement of an invitation for bids setting forth therein an accurate legal description of the land proposed to be leased; the date, time, and place when and where bids therefor will be received; and such other information as the commission may deem necessary. Prior to the advertising, the commission shall prepare a proposed form of lease and appropriate instructions which shall be furnished to prospective bidders under such conditions as the commission may prescribe. Sealed bids shall be submitted to the secretary of the commission and each bid shall be accompanied by a bid bond or such other security as may be prescribed by the commission.

(e) All bids shall be opened in public on the date and at the time and place specified in the advertisement of the invitation for bids. The commission shall formally determine and announce which bid and bidder it considers to be most advantageous to the state. The commission shall have the right to reject any or all bids and bidders and the right to waive formalities in bidding.

(f) The commission, acting for and on behalf of and in the name of the state, is authorized to execute, grant, and convey a lease pursuant to this Code section on any state owned land to any state agency without the necessity of complying with the public competitive bid procedure stated in this Code section; provided, however, the mineral resources so mined, dredged, and removed from the state owned land must be utilized on projects of the state agency.

(g) Each lease granted under this Code section after competitive bidding shall provide for a primary term of not more than ten years and shall provide for a royalty on production therefrom of not less than one-eighth part of any oil produced and saved, or the value of same, and one-eighth part of the gas, or the value of same, that may be produced from and is sold or used off the premises. The lease shall provide for delay rentals in the sum of at least 10¢ per net mineral acre payable on or before the first anniversary date of the lease, 25¢ per net mineral acre payable on or before the second anniversary date of the lease, 50¢ per net mineral acre payable on or before the third anniversary date of the lease, and at least \$1.00 per net mineral acre payable on or before each subsequent anniversary date during the primary term of the lease. The lease may contain such other provisions, including provisions for offset drilling, protection from drainage, pooling, and lease maintenance by resumption of interrupted delay rental payments, operations for drilling, production, and force majeure, as may be desired or determined appropriate by the commission.

(h) An electric log of each development well shall be filed with the commission and with the Department of Natural Resources within 30 days after the well has been completed or abandoned. An electric log of each exploratory well shall be filed with the commission and with the director within six months after the completion or abandonment of the well; but, if the operator of the well requests that the log be treated as confidential, the request for confidentiality shall be honored strictly for an additional period of six months; provided, however, that nothing in this article shall be construed so as to repeal any requirement of Part 2 of Article 2 of Chapter 4 of Title 12.

(i) The development and operation of oil and gas wells on state owned lands shall be done, so far as practicable, in such manner as to prevent the pollution of water; destruction of fish, oysters, and marine life; and the obstruction of navigation.

(j) Notwithstanding any other provisions of this Code section to the contrary, when it is determined to be in the best interest of the state, the commission, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any person a lease which authorizes the person to dredge a portion of the bottom or bank of a state owned waterway or waters and to appropriate any and all products from such dredging, subject to the following conditions:

(1) A written request for a lease and a locational, dimensional, and directional sketch or a plat of survey of the proposed lease premises, prepared at the sole cost and expense of the person requesting the lease, in form and content acceptable to and approved by the commission, and showing and describing thereon the lease premises of the lease, must be received by the commission detailing therein the reason and all the particulars for the request and outlining the purpose and use to be made of any and all products derived from such dredging. If a sketch is submitted to and is approved and accepted by the commission, paragraph (3) of subsection (b) of Code Section 50-16-122, relating to the requirement of the filing with the Secretary of State of a plat of survey with a conveyance disposing of real property, shall be relaxed; and the Secretary of State in such a transaction shall accept in lieu of the required plat of survey the sketch which was approved and accepted by the commission;

(2) The executive director of the commission shall forward for comment and advice to the Department of Natural Resources and to the state agency, department, authority, commission (excluding the commission), official, or board (if other than the Department of Natural Resources) that has current custody and control of the proposed lease premises, the written request and sketch or plat of survey received by the commission;

(3) The commission shall investigate, require compliance with all conditions laid down by the commission, and determine the form and all

of the terms, conditions, provisions, and considerations of, incorporations in, and attachments to each such lease negotiated, prepared, executed, and issued (granted and conveyed) by the commission; provided, however, that the term of any such lease shall not exceed a period of time of five years and provided, further, that any such lease shall contain a provision requiring that any activity undertaken pursuant to the lease be in compliance with the applicable provisions of all state environmental or natural resources laws administered or enforced by the Department of Natural Resources or its successor and with all applicable policies of the Georgia Coastal Management Board or its successor;

(4) Both the Department of Natural Resources and any state agency, department, authority, commission (excluding the commission), official, or board that has current custody and control of the proposed lease premises must execute the written grant and conveyance of lease, each indicating by the execution that it or he has no objection to the granting and conveying of the lease; and

(5) The form of execution by the commission which is acting for and on behalf of and in the name of the state of each such lease shall be as follows:

STATE OF GEORGIA

Acting By And Through The
State Properties Commission

By: _____ (Seal)

Name: _____

Title: Governor as chairperson
of the State
Properties Commission

Attest: _____ (Seal)

Name: _____

Title: Secretary of State as
secretary of the
State Properties
Commission

(Commission Seal)

(State Seal)

Signed, sealed, and
delivered (as to
both the Governor
as chairperson and the
Secretary of State
as secretary)

in the presence of:

Witness

Notary public

My commission expires _____.
(Notary public seal impressed here)

(k) Notwithstanding any other provisions of this Code section to the contrary, when it is determined by the commission to be in the best interests of the State of Georgia, the commission, acting for and on behalf of and in the name of the State of Georgia, is authorized to grant and convey to any eligible person, as defined herein, an oil and gas lease which authorizes such person to extract and remove from state owned lands all oil, gas, and affiliated hydrocarbons and gases without the necessity of complying with the public competitive bid procedure set forth in this Code section, subject to and upon the following conditions:

(1) “Eligible person” shall be defined as any person who is the owner of the oil and gas interests in lands adjoining the state owned land sought to be leased by said person such that at least 75 percent of the boundary of the state owned land sought to be leased is bordered by said adjoining lands. “Owner of the oil and gas interests in lands” shall mean the person or persons who have the right to drill for oil and gas on those lands and appropriate the production either for himself or themselves and another or others. “Oil and gas” shall include affiliated hydrocarbons and gases;

(2) Upon application by any interested person for an oil and gas lease pursuant to this subsection, the commission shall determine whether or not the applicant is an eligible person. If the commission determines that the applicant is an eligible person, then the commission is authorized to grant and convey to the applicant an oil and gas lease covering the state owned land sought to be leased and described in the application without the necessity of complying with the public competitive bid procedure set forth in this Code section. Nothing in this subsection shall prevent the commission from complying with the public competitive bid procedure set forth in this Code section when leasing the state owned land described in the application or any other state owned land if it finds such procedure to be in the best interests of the State of Georgia;

(3) The application for the oil and gas lease shall be in writing and shall contain a request for an oil and gas lease; a description of the state owned land sought to be leased; a locational, dimensional, and directional sketch in a form acceptable to the commission or a plat of survey of the state owned land sought to be leased; a true statement that the applicant is the owner of the oil and gas interests in lands adjoining the

state owned land sought to be leased such that at least 75 percent of the boundary of the state owned land sought to be leased is bordered by said adjoining lands; copies of all oil and gas leases or deeds to the lands adjoining the state owned lands sought to be leased and by which the applicant claims the ownership of the oil and gas interests; and a list of the names and addresses of all owners of the oil and gas interests in the lands adjoining the state owned land sought to be leased describing the nature of their interest. The entire application must be in a form acceptable to the commission;

(4) Any lease granted to any person pursuant to this subsection shall be subject to subsection (g) of this Code section;

(5) Prior to the execution of any oil and gas lease pursuant to this subsection, the commission shall enter into an agreement with the department or agency which has legal title to or custody of the state owned lands sought to be leased. The agreement shall contain the department's or agency's certification that the state owned land is available for leasing and such other terms and provisions which the parties to the agreement deem necessary to protect the state owned land; and

(6) The form of execution by the commission, who is acting for and on behalf of and in the name of the State of Georgia, of each oil and gas lease shall be as set forth in paragraph (5) of subsection (j) of this Code section. (Code 1933, § 91-110a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1977, p. 762, §§ 1, 2; Ga. L. 1979, p. 1028, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p. 857, §§ 1-6; Ga. L. 1985, p. 149, § 50; Ga. L. 2005, p. 100, § 16A/SB 158; Ga. L. 2006, p. 72, § 50/SB 465.)

Cross references. — Projects involving deepening, widening, and improving of river channels for navigational and other purposes, Ch. 9, T. 52.

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Cited in Georgia-Pacific Corp. v. Saylor Marine Corp., 246 Ga. 133, 269 S.E.2d 24 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 31 et seq. 63C Am. Jur. 2d, Public Lands, § 126 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 18, 24, 138. 73B C.J.S., Public Lands, § 287 et seq. 81A C.J.S., States, § 264.

ALR. — "Discovery," under mining laws, of radioactive minerals such as uranium, 66 ALR2d 560.

50-16-44. Power of eminent domain; provisions cumulative and not to supersede other powers; form of proceedings; acquisition of public property or interest.

(a) The commission, acting for and on behalf of and in the name of the state, is empowered to take or damage by condemnation and the power of eminent domain for the public purposes of the state any private property upon first paying or tendering just and adequate compensation to the owner of such private property. The power of eminent domain shall be cumulative of any other power of eminent domain provided by law. Condemnation proceedings by the commission, acting for and on behalf of and in the name of the state, shall take the form provided in Chapter 1 of Title 22 and Articles 1 and 2 of Chapter 2 of Title 22 or the form provided in Article 3 of Chapter 2 of Title 22. The power of condemnation and eminent domain to take or damage private property authorized by this Code section shall neither supersede nor abridge the powers of condemnation and eminent domain to take or damage private property given severally to the Department of Transportation and the Board of Regents of the University System of Georgia.

(b) The commission, acting for and on behalf of and in the name of the state, is also authorized to acquire public property or an interest therein by condemnation and the power of eminent domain when such acquisition is approved by the State Commission on the Condemnation of Public Property as provided in Code Section 50-16-183. Condemnation proceedings by the commission shall take the form provided in Article 3 of Chapter 2 of Title 22. As used in this subsection, the term "public property" has the same meaning provided for in Code Section 50-16-180. (Code 1933, § 91-105A, enacted by Ga. L. 1964, p. 146, § 1; Code 1933, § 91-111a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1; Ga. L. 1986, p. 1187, § 6.)

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 21 et seq.

C.J.S. — 29A C.J.S., Eminent Domain, § 24 et seq.

50-16-45. Department of Natural Resources authorized to convey certain property without commission approval.

The Department of Natural Resources is authorized to convey to municipalities, counties, or combinations thereof, in the name of the state, by appropriate instrument, all of the state's interest in any real property donated to the department at any time, in parcels not exceeding three acres, to be used for the construction and operation thereon of boat-launching ramps without the prior approval of the commission. The conveyance may be made without prior appraisal, without a plat, and

without public bidding procedures and shall be made for nominal consideration or such consideration as may be agreed upon between the department and the other party or parties to the conveyance. (Ga. L. 1979, p. 816, § 3; Ga. L. 1980, p. 587, § 1.)

50-16-46. State agencies directed to provide State Properties Commission with technical assistance.

The Department of Natural Resources, the Public Service Commission, and all other state agencies are requested and directed to provide such technical assistance and services as shall be requested and needed by the commission in the execution and performance of its duties under this article. (Code 1933, § 91-113a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

50-16-47. Article to be construed liberally.

This article shall be liberally construed so as to effectuate the purposes of the article. (Code 1933, § 91-119a, enacted by Ga. L. 1973, p. 857, § 1; Ga. L. 1975, p. 1092, § 1.)

ARTICLE 3

GOVERNOR'S POWERS GENERALLY

50-16-60. Governor to issue land grants.

The Governor shall issue all grants to lands under the laws of this state; such shall not be conclusive but subject to the investigation of the courts. Whenever such grants are declared by the proper court to have been issued wrongly, it shall be the Governor's duty to issue another grant in accordance with such decision, if the decision of the court so requires. (Orig. Code 1863, § 70; Code 1868, § 64; Code 1873, § 61; Code 1882, § 61; Civil Code 1895, § 122; Civil Code 1910, § 145; Code 1933, § 91-401.)

Cross references. — Duties of Secretary of State with regard to land grants issued by Governor, § 45-13-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 118.

C.J.S. — 73B C.J.S., Public Lands, § 249 et seq. 81A C.J.S., States, § 263.

50-16-61. General supervision and office assignment.

The Governor shall have general supervision over all property of the state with power to make all necessary regulations for the protection thereof,

when not otherwise provided for. He shall assign rooms in the capitol to all officers who are required to hold their offices there and, in the absence of any legislative provision, designate the purpose to which other rooms shall be applied. (Orig. Code 1863, § 71; Code 1868, § 65; Code 1873, § 62; Code 1882, § 62; Civil Code 1895, § 123; Civil Code 1910, § 146; Code 1933, § 91-402.)

Cross references. — Authority of Legislative Services Committee with regard to assignment of space in state capitol, § 28-4-2.

JUDICIAL DECISIONS

Protection of state property. — The Governor has no right to contract away the state's property at the Governor's pleasure or discretion. It is the Governor's duty to protect the property of the state, but the Governor is not given any authority to sell the state's property, or to contract with reference thereto. *Western Union Tel. Co. v. Western & A.R.R.*, 142 Ga. 532, 83 S.E. 135 (1914).

Allocating use of state-owned water bottoms. — The state owns fee simple title to the foreshore on navigable tidal waters and, as a result, owns the river's water bottoms up to the high water mark and may regulate the use of these tidelands for the public good. *Dorroh v. McCarthy*, 265 Ga. 750, 462 S.E.2d 708 (1995).

Member of highway board could not be forcibly removed from office under authority of this section; a public office is a franchise, and not a mere tangible combination of rooms, tables, books, and papers, and loss of the physical possession of such tangible property does not necessarily dispossess the officer of the intangible franchise entrusted by law to the individual as a public officer. *Patten v. Miller*, 190 Ga. 105, 8 S.E.2d 776 (1940).

Cited in *Womack v. U.S. Fid. & Guar. Co.*, 85 Ga. App. 564, 69 S.E.2d 812 (1952); *Rolleston v. State*, 245 Ga. 576, 266 S.E.2d 189 (1980).

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Governor's limited authority. — The authority given in this section is broad enough to give the Governor power to insure property for the protection of the state, but this section is not broad enough to give the right or authority to insure property for the protection of others. Since the state is not liable to suit without the state's consent, and is not liable for the torts of the state's officers, agents, and employees, unless made so by law, there does not appear to be any legal duty resting on the state to insure the state's operations for protection of others. 1945-47 Op. Att'y Gen. p. 550.

Protection of property is a matter within duties of Governor. 1945-47 Op. Att'y Gen. p. 542.

Allocating use of state-owned water bottoms. — In managing tidelands, the De-

partment of Natural Resources acts under the authority of O.C.G.A. § 50-16-61 and the Department's employment of the extension of property lines method of allocating use of state-owned waterbottoms may be generally acceptable, but rigid adherence to such a policy when the policy denies deep water access to a riparian or littoral owner, may cause inequitable results. 1993 Op. Att'y Gen. No. 93-25.

Sale of property or granting of permanent easement. — This section is not construed to authorize the general sale of property, such sale of state property must be specifically authorized by the General Assembly; therefore, if the Governor does not have the authority to sell any real estate belonging to the state, the Governor would also be without power to encumber such real estate by

the grant of a permanent easement across the real estate. 1948-49 Op. Att'y Gen. p. 230.

Power to grant easement to utility company. — Governor is empowered to grant an easement to the Georgia Power Company for the purpose of erecting poles to be used in transmitting electric current to the state prison, if the Governor so desires. 1948-49 Op. Att'y Gen. p. 349.

Department of Human Resources does not have authority to grant easement over state property for sewer installation by county since any such disposition of state property is the exclusive province of the General Assembly. 1962 Op. Att'y Gen. 404.

Procedure for transfers of property between departments. — The governing board of the department wishing to relinquish control over the property should forward a resolution to the Governor requesting the transfer and stating that the property can no longer be used advantageously by that department; the Governor should also be furnished with a resolution from the proposed department-transferee, stating that it is willing to accept and advantageously use the property in accordance with a specifically stated purpose. 1967 Op. Att'y Gen. No. 67-75.

50-16-62. Actions for recovery of state debts.

Whenever the Governor, after consulting with the Attorney General, shall deem it proper to institute an action for the recovery of a debt due the state or money or property belonging to the state, he is authorized and required to institute the action in the proper court of this state, with the same rights as any citizen, and to require the aid of the Attorney General to begin and carry on the action. (Ga. L. 1872, p. 39, § 1; Code 1873, § 63; Code 1882, § 63; Civil Code 1895, § 126; Civil Code 1910, § 149; Code 1933, § 91-405; Ga. L. 1982, p. 3, § 50.)

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Effect on determination of real party in interest. — Assuming that O.C.G.A. § 50-16-62 applies to suits in federal court, it has no effect on question of identity of real party in interest, a determination made under federal law. *Busbee v. Continental Ins. Co.*, 526 F. Supp. 1243 (N.D. Ga. 1981).

Action by state official in own name for benefit of state is properly characterized as action by state. *Busbee v. Continental Ins. Co.*, 526 F. Supp. 1243 (N.D. Ga. 1981).

Recovery of money. — Governor has authority to institute suit for recovery of money of which state has been defrauded, under the general power granted to the Governor of supervising the property of the state. *Alexander v. State*, 56 Ga. 478 (1876).

Governor may maintain action on bond made to predecessor. *Anderson v. Brumby*, 115 Ga. 644, 42 S.E. 77 (1902).

Governor's authority limited. — Governor has no power to compromise claims due the state penitentiary because of negligent escapes. *Penitentiary Co. No. 2 v. Gordon*, 85 Ga. 159, 11 S.E. 584 (1890).

Presumption of attorney's authority to institute suit. — Where a declaration in favor of the state is signed by attorneys, the legal presumption, upon demurrer (now motion to dismiss), is that the attorneys had the authority of the Governor to institute the suit. *Alexander v. State*, 56 Ga. 478 (1876).

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Attorney General's potential authority. — Authority of Attorney General to manage state's legal affairs to protect interests of people of state might provide authority to

prohibit collection of Department of Medi- nity Health) overpayments in a specific situ- cal Assistance (now Department of Commu- ation. 1980 Op. Att'y Gen. No. 80-89.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 85 et seq. **C.J.S.** — 81A C.J.S., States, § 529 et seq.

50-16-63. Governor authorized to lend art objects, pictures, and other personal property to institutions for display.

The Governor is authorized to lend to public and private institutions pictures, objects of art, and other nonessential personal property of the state for the purpose of display by such institutions under such proper safeguards relating to ownership and preservation as the Governor, in his judgment, shall designate. (Ga. L. 1972, p. 837, § 1.)

50-16-64. Authority for Governor to purchase property at sheriff's sale under execution in favor of state.

At all sheriff's sales under any execution in favor of the state or the Governor, the Governor, or anyone authorized by him, may purchase the property so sold, provided that in no case shall more be bid for such property than the amount due the state upon the execution. (Ga. L. 1873, p. 49, § 1; Code 1873, § 64; Code 1882, § 64; Civil Code 1895, § 127; Civil Code 1910, § 150; Code 1933, § 91-501.)

OPINIONS OF THE ATTORNEY GENERAL

Transfer of property purchased at sheriff's sale to department. — A department need not request that the Governor prepare a deed conveying property purchased by the state through a sheriff's sale to a department; a department must request that the Governor execute an executive order transferring the use of the property to a department. 1970 Op. Att'y Gen. No. 70-15.

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

Am. Jur. 2d. — 30 Am. Jur. 2d, Executions and Enforcement of Judgments, § 276. **C.J.S.** — 33 C.J.S., Executions, § 222.

50-16-65. Authority for Governor to rent or sell property purchased at sheriff's sale; manner of sales.

The Governor may rent out property purchased pursuant to Code Section 50-16-64 or sell the same at public outcry to the highest bidder, upon such terms as he may deem to be in the interests of the state, and may

make the necessary conveyances for the same, provided that such sale shall be advertised in the same manner and for the same time as sheriff's sales. (Ga. L. 1873, p. 49, § 3; Code 1873, § 66; Code 1882, § 66; Civil Code 1895, § 129; Civil Code 1910, § 152; Code 1933, § 91-503.)

OPINIONS OF THE ATTORNEY GENERAL

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

ALR. — Validity of lease of standing timber on state land by entryman before patent, 83 ALR 1347. Rights, duties, and remedy in respect of leasing or hiring public property to private person for occasional use, 86 ALR 1175.

50-16-66. Authority to pay exemptions and superior liens and encumbrances on property purchased at sheriff's sale.

If there is any exemption of any part of the property purchased pursuant to Code Section 50-16-64, or the proceeds thereof, or any lien or encumbrance which is of superior dignity to the lien of the state, the Governor may pay the amount so exempted, or the lien or encumbrance, to the person entitled thereto. (Ga. L. 1873, p. 49, § 4; Code 1873, § 67; Code 1882, § 67; Civil Code 1895, § 130; Civil Code 1910, § 153; Code 1933, § 51-504.)

50-16-67. Report to General Assembly of transactions involving property purchased at sheriff's sale.

The Governor shall report to the General Assembly at its following session any purchase, lease, or sale made under Code Sections 50-16-64, 50-16-65, 50-16-66, and 50-16-68 giving full particulars of the transaction. (Ga. L. 1873, p. 49, § 5; Code 1873, § 68; Code 1882, § 68; Civil Code 1895, § 131; Civil Code 1910, § 154; Code 1933, § 91-505.)

OPINIONS OF THE ATTORNEY GENERAL

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of fi. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

RESEARCH REFERENCES

ALR. — Lien of attorney on public fund or property, 2 ALR 274; 24 ALR 933.

50-16-68. Use and title of property purchased at sheriff's sale.

The property purchased as provided in Code Section 50-16-64 shall be for the use of the state, and the title thereto shall be made to the Governor and his successors in office and assigns. (Ga. L. 1873, p. 49, § 2; Code 1873, § 65; Code 1882, § 65; Civil Code 1895, § 128; Civil Code 1910, § 151; Code 1933, § 91-502.)

OPINIONS OF THE ATTORNEY GENERAL

Transfer of property purchased at sheriff's sale to department. — A department need not request that the Governor prepare a deed conveying property purchased by the state through a sheriff's sale to a department; a department must request that the Governor execute an executive order transferring the use of the property to a department. 1970 Op. Att'y Gen. No. 70-15.

Disposition of acquired property. — Property acquired by Highway Board (now Transportation Board) pursuant to issuance of f.i. fa. must be sold or rented by board and cannot be appropriated to use of board. 1962 Op. Att'y Gen. p. 275.

ARTICLE 4**MISCELLANEOUS SALE AND PURCHASE PROVISIONS****50-16-80. Sale or disposition of state livestock or swine.**

(a) No livestock or swine belonging to the state, or to any agency, board, or department of this state shall be sold or otherwise disposed of, except as provided in subsections (b) and (c) of this Code section.

(b) Livestock and swine belonging to the state or to any agency, board, or department of this state, whenever sold, shall be advertised for sale in a newspaper of general circulation, including the *Farmers and Consumers Market Bulletin*, for ten days and all livestock and swine shall be sold at public auction only to farmers of this state.

(c) All livestock or swine belonging to the state or to any agency or department of this state, whenever disposed of, other than by sale, shall be slaughtered for the use and benefit of state institutions.

(d) This Code section shall not apply to the University System of Georgia since the animals are used for educational instruction, scientific information, and research work.

(e) Any official or employee of the state or of any agency, board, or department of the state who violates any of the provisions of this Code section shall be guilty of a misdemeanor. In addition, the person shall be discharged from the services of the state or of any agency, board, or department of the state. (Ga. L. 1945, p. 339, §§ 1-5; Ga. L. 1982, p. 3, § 50; Ga. L. 2002, p. 415, § 50.)

Cross references. — Livestock dealers and auctions, Ch. 6, T. 4.

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Disposition of livestock owned by state. — Livestock on state property belonging to the state can be sold only through the purchasing department (now Department of Administrative Services), or slaughtered only for the use and benefit of state institutions. 1954-56 Op. Att'y Gen. p. 659.

RESEARCH REFERENCES

ALR. — Withdrawal of property from auction sale, 37 ALR2d 1049.

50-16-81. Contracts by state or subdivision for purchase, lease, or acquisition of United States equipment, supplies, materials, or other property.

(a) The state or any department, agency, political subdivision, or municipality of the state may enter into and make any contract with the United States or with any department or agency thereof for the purchase, lease, or other acquisition of any equipment, supplies, material, or other property, both real and personal; and any political subdivision or municipality of the state may contract with the state or any department or agency thereof for the purchase, lease, or other acquisition of any such equipment, supplies, materials, or other property, both real and personal. Either of such contracts may be made without:

- (1) Publicly advertising for bids or posting notices of expenditures;
- (2) Inviting or receiving competitive bids; or
- (3) Requiring delivery of purchases before payment.

(b) The appropriate authority of the state, department, agency, political subdivision, or municipality may designate an employee or officeholder to enter bids at sales of equipment, supplies, material, or other property, both real and personal, owned by the United States or an agency thereof. The person may be authorized to make any payments required in connection with the bidding and sale.

(c) This Code section shall apply only to contracts made with the United States or with any department or agency thereof by the state or any department, agency, political subdivision, or municipality of the state or to any contracts made with the state by any political subdivision or municipality thereof.

(d) This Code section shall not be construed to repeal, alter, amend, change, or modify in any manner whatsoever any general, local, or special law as to the method of procedure or requirements provided for the making

of any contract by any of the stated authorities other than the kind of contracts set forth in this Code section. (Ga. L. 1945, p. 394, §§ 1-4; Ga. L. 1982, p. 3, § 50.)

Editor's notes. — Ga. L. 1945, p. 394, § 5, not codified by the General Assembly, provides that any provisions of the law, charter, ordinance, resolution, by-law, rule, or regulation which are inconsistent with the provisions of that Act be and the same are hereby suspended to the extent that such provisions

are inconsistent with the provisions of the Act.

Law reviews. — For article surveying general legal principles of municipal and county government purchasing and contracting in Georgia, see 16 Mercer L. Rev. 371 (1965).

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Exception for federal purchases. — Purchase of federal property under this section is an exception to general purchasing laws of state. 1960-61 Op. Att'y Gen. p. 442.

50-16-82. Effect of payment of purchase money or other consideration causing property to be transferred to state.

(a) As used in this Code section, the term:

(1) "Person" means any individual; general or limited partnership; joint venture; firm; private, public, or public service corporation; association; unincorporated association; fiduciary; or any other entity other than the state.

(2) "State" means the State of Georgia, its agencies, departments, divisions, bureaus, boards, commissions, authorities, and associations.

(b) Payment of purchase money or any other consideration by any person, which payment causes or partially causes property, real or personal or mixed, to be transferred to the state shall not result in nor imply a trust, nor permit the inference that a trust was created, nor permit the inference that any other interest, legal or equitable, was created either in favor of the person making the payment or in favor of any other person unless the trust or other interest is established expressly in writing.

(c) Payment of purchase money or any other consideration by any person, which payment causes or partially causes property, real or personal or mixed, to be transferred to the state, shall be conclusively presumed to be a gift to the state. (Ga. L. 1976, p. 193, §§ 1-3.)

RESEARCH REFERENCES

Am. Jur. 2d. — 76 Am. Jur. 2d, Trusts, §§ 196, 206. **C.J.S.** — 89 C.J.S., Trusts, §§ 98, 100, 102.

ARTICLE 5

WESTERN AND ATLANTIC RAILROAD

50-16-100. Exclusive state property.

The railroad from Atlanta to Chattanooga is the property of this state exclusively and shall be known as the Western and Atlantic Railroad. (Orig. Code 1863, § 888; Code 1868, § 96; Code 1873, § 963; Code 1882, § 963; Ga. L. 1889, p. 362, § 1; Civil Code 1895, § 1020; Civil Code 1910, § 1287; Code 1933, § 91-201.)

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Lease of railroad by state. — The state owns a railroad known as the Western & Atlantic Railroad extending from Atlanta to Chattanooga. In November, 1889 (Ga. L. 1889, p. 362), an Act was passed by the General Assembly providing for the railroad's lease. *Western & Atl. R.R. v. Roberson*, 61 F. 592 (6th Cir. 1894); *State v. Western & A.R.R.*, 136 Ga. 619, 71 S.E. 1055 (1911).

Relation of state to lessee of the state's railroads is that of landlord and tenant. The lessee has but a usufructuary interest in the possession of the leased premises for the specific uses named in the lease. *State v. Western & A.R.R.*, 136 Ga. 619, 71 S.E. 1055 (1911).

Condemnation proceedings against state and lessee. — Because of the landlord/tenant relation, any condemnation proceeding must be instituted jointly against the state and the lessee, unless the state gives to a telegraph company permission to occupy the state's railroad without condemnation, which it had not done. *Western & A.R.R. v. Western Union Tel. Co.*, 138 Ga. 420, 75 S.E. 471, 42 L.R.A. (n.s.) 225 (1912).

Rights acquired under lease between state

and railroad. — Under the lease contract entered into between the state as the owner of the Western & Atlantic Railroad, and the Nashville, Chattanooga & St. Louis Railway, on May 11, 1917, the lessee acquired a right to the use of the underground and overhead space on the portion of the land lying between streets in the City of Atlanta constituting a part of the right of way of the Western & Atlantic Railroad with the right to sublet any part thereof not needed for railroad purposes without the consent of the Governor. *State v. Western & A.R.R.*, 185 Ga. 658, 196 S.E. 392 (1938).

Right of city to pedestrian crossings. — Because there can be no adverse possession or implied dedication of state property to a municipal corporation, which is a creature of the state, a city could not acquire a right to use pedestrian crossings over the Western & Atlantic Railroad right-of-way without the state's express consent. *City of Marietta v. CSX Transp., Inc.*, 272 Ga. 612, 533 S.E.2d 372 (2000).

Cited in *Seignious v. Metropolitan Atlanta Rapid Transit Auth.*, 252 Ga. 69, 311 S.E.2d 808 (1984).

50-16-101. Relationship of state as owner of railroad.

The state occupies the same relation to the railroad, as owner, that any company or corporation does to its railroad; and the obligations of the state to the public concerning the railroad, and of the public to the railroad, are the same as govern the other railroads of this state, so far as is consistent with the sovereign attributes of this state and the laws of force for its conduct. (Orig. Code 1863, § 889; Code 1868, § 968; Code 1873, § 964;

Code 1882, § 964; Civil Code 1895, § 1021; Civil Code 1910, § 1288; Code 1933, § 91-202.)

JUDICIAL DECISIONS

Cited in *Western & A.R.R. v. Gray*, 172 Ga. 286, 157 S.E. 482 (1931); *City of Marietta v. CSX Transp., Inc.*, 272 Ga. 612, 533 S.E.2d 372 (2000).

50-16-102. All railroad laws to apply.

All the public road laws and penal laws touching the railroads of this state, whether to obligate or protect, apply to the state railroad unless specially excepted or some other provision is prescribed in lieu of some one or more thereof. (Orig. Code 1863, § 890; Code 1868, § 969; Code 1873, § 965; Code 1882, § 965; Civil Code 1895, § 1022; Civil Code 1910, § 1289; Code 1933, § 91-203.)

Cross references. — Regulation of railroads generally, Chs. 8 and 9, T. 46.

JUDICIAL DECISIONS

Railroad's public liability. — *Western & Atlantic Railroad* is not absolved from liability to public which arises from the exercise of its franchise to operate a railroad and to run trains along its tracks by leasing, with legislative authority and approval, the use of its tracks to another railroad company, where there is no legislative exemption of the

Western & Atlantic Railroad from any liability to the public arising from the use of its tracks by the lessee railroad. *Bennett v. Western & A.R.R.*, 42 Ga. App. 821, 157 S.E. 365 (1931).

Cited in *Western & A.R.R. v. Gray*, 172 Ga. 286, 157 S.E. 482 (1931).

50-16-103. Landowners authorized to build stock gaps.

All persons in this state owning land through which the Western and Atlantic Railroad passes may build stock gaps on the railroad when the line of their fences may cross the same and may join their fences to such stock gaps, provided the landowners shall not improperly interfere with the bed of the railroad, render it less safe, or interfere with the running of the trains thereon. (Ga. L. 1865-66, p. 261, § 1; Code 1868, § 1016; Code 1873, § 1012; Code 1882, § 1012; Civil Code 1895, § 1069; Civil Code 1910, § 1336; Code 1933, § 91-204; Ga. L. 1982, p. 3, § 50.)

50-16-104. Power of condemnation authorized.

The Western and Atlantic Railroad (the corporation existing by virtue of the lease of the Western and Atlantic Railroad property from the State of Georgia by the Louisville and Nashville Railroad Company, made March 4, 1968) is authorized and empowered to acquire by condemnation the title to all such real estate and other property as may be necessary or proper for the

construction or maintenance of main line tracks, sidetracks, spur tracks, passing tracks, stations or station facilities, shops, section houses, pumping houses, roundhouses, pipelines, signal telegraph or telephone lines, or for the maintenance of the track or tracks of the railroad or other railroad uses, in connection with the maintenance or operation of the Western and Atlantic Railroad properties. (Ga. L. 1918, p. 253, § 1; Ga. L. 1918, p. 254, § 1; Code 1933, § 91-301.)

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louisville & Nashville Railroad Company, made

March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

RESEARCH REFERENCES

C.J.S. — 29A C.J.S., Eminent Domain, § 23 et seq.

ALR. — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 ALR 679.

Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it, 7 ALR2d 364.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 ALR2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 ALR2d 791.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 ALR4th 840.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 ALR4th 68.

50-16-105. Width of land taken by condemnation.

The land which may be acquired by condemnation under and by virtue of this Code section and Code Sections 50-16-104, 50-16-106, and 50-16-107 for the construction of a track or tracks shall not exceed 200 feet in width. (Ga. L. 1918, p. 253, § 2; Code 1933, § 91-302.)

50-16-106. Manner for determining rights and compensation in condemnation proceeding.

In the event the Western and Atlantic Railroad is unable to obtain title to real estate or other property from the owner or owners thereof by contract, lease, or purchase, it may obtain such title by condemnation, the rights to be acquired by it and the amount of compensation to be paid by it therefor to be assessed and determined in the manner provided in Parts 2 through 5 of Article 1 of Chapter 2 of Title 22. (Ga. L. 1918, p. 253, § 3; Ga. L. 1918, p. 254, § 2; Code 1933, § 91-303.)

RESEARCH REFERENCES

C.J.S. — 29A C.J.S., Eminent Domain, § 24 et seq.

ALR. — Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it, 7 ALR2d 364.

Right to intervene in court review of zoning proceeding, 46 ALR2d 1059.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 ALR2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 ALR2d 791.

Eminent domain: right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land — state cases, 95 ALR3d 752.

Eminent domain: recovery of value of improvements made with knowledge of impending condemnation, 98 ALR3d 504.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 ALR4th 68.

50-16-107. Rights acquired by condemnation to vest in state.

At the termination of the lease of the Western and Atlantic Railroad property, the property rights acquired by condemnation under Code Sections 50-16-104 through 50-16-106 shall go to and become vested in the state. (Ga. L. 1918, p. 253, § 4; Ga. L. 1918, p. 254, § 3; Code 1933, § 91-304.)

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louisville & Nashville Railroad Company, made

March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

50-16-108. Lessee subject to Public Service Commission regulation.

The railroad operation by the lessee of the Western and Atlantic Railroad shall be subject to the regulation of the Public Service Commission. (Code 1933, § 91-113a, enacted by Ga. L. 1964, p. 146, § 1; Ga. L. 1973, p. 857, § 1; Code 1933, § 91-114a, enacted by Ga. L. 1975, p. 1092, § 1.)

Cross references. — Regulation of railroads generally, Chs. 8 and 9, T. 46.

Editor's notes. — The lease of the Western & Atlantic Railroad property by the Louis-

ville & Nashville Railroad Company, made March 4, 1968, referred to above, is found at Ga. L. 1968, p. 54, as amended by Ga. L. 1986, p. 231.

JUDICIAL DECISIONS

Lease contract between state and railroad. — Under the lease contract entered into between the state as the owner of the Western & Atlantic Railroad, and the Nashville, Chattanooga & St. Louis Railway, on May 11, 1917, the lessee acquired a right to the use of

the underground and overhead space on the portion of the land lying between streets in the City of Atlanta constituting a part of the right of way of the Western & Atlantic Railroad, with the right to sublet any part thereof not needed for railroad purposes,

without the consent of the Governor. State v. Western & A.R.R., 185 Ga. 658, 196 S.E. 392 (1938).

ARTICLE 6

INVENTORY OF PROPERTY

PART 1

INVENTORY OF REAL PROPERTY

50-16-120. Definitions.

As used in this part, the term:

(1) "Entities" or "entity" means any and all constitutional offices, as well as all authorities, departments, divisions, boards, bureaus, commissions, agencies, instrumentalities, or institutions of the state.

(2) "Real property" means any improved or unimproved real property owned by the state and under the jurisdiction of any state entity.

(3) "State" means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

(4) "State facility" means a building owned by the state or under the custody or control of the state or insured by the program of self-insurance established under Code Sections 50-16-8 through 50-16-11.

(5) "State lease" means a lease or rental agreement entered into by a state entity for a definite period of time for the use by a state entity of real property or facilities or a lease of state real property or state facilities by a state entity for use by another party. (Code 1933, § 91-401a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 2005, p. 100, § 15/SB 158.)

Code Commission notes. — Pursuant to inserted preceding "the term" in the introductory language.
Code Section 28-9-5, in 1986, a comma was

50-16-121. Real property inventory; form; filing of duplicate with State Properties Commission; index inventories and devising of forms; completion of forms within 30 days.

(a) All state entities are directed to maintain at all times a complete current inventory of real property under their jurisdiction. The inventory shall be accomplished by the completion of a form, substantially as follows, for each parcel of real property held by such departments and public corporations:

REAL PROPERTY INVENTORY

Date: _____

(Date form completed)

(1) State Entity: _____

(Board, bureau, commission, department, official, or other agency)

(2) Grantor: _____

(Exactly as it appears on instrument)

(3) Grantee: _____

(Exactly as it appears on instrument)

(4) Date of instrument: _____

(5) Acreage: _____

(6) Records, office of the clerk, Superior Court _____
County (a) Deed Book ____ Folio ____ (b) Plat or Map Book _____
Folio ____(7) Location of property: County _____ City _____ Street
address, if applicable, and if not, brief directions to property

(8) Type of instrument: (a) Warranty deed (), (b) Quitclaim deed (), (c) Eminent domain, deed executed (), (d) Trustee's deed (), (e) Administrator's or Executor's deed (), (f) Simple deed, no warranty (), (g) Lease (), (h) Use permit (), (i) Resolution of General Assembly (), (j) Deed of gift ().

(9) Kind of conveyance: (a) Fee simple (), (b) Other (), state terms and conditions _____

(10) If acquired by eminent domain by court order and no deed was executed: (a) Name of principal defendant _____, (b) Case number _____, (c) Date of final judgment _____

(11) Location of original deed _____

(12) Is property surplus? _____

(13) Purchase price of property _____

(14) Purchased with (a) State funds? _____, (b) Federal funds? _____
(Show percent state & federal)

(15) Estimated present value: (a) Land _____ (b) Improvements _____

(16) Insured for: \$ _____ with _____
_____ Ins. Co.

(17) Present use _____

Name of person completing form _____

Title _____ Signature _____

(b) The inventory required by subsection (a) of this Code section shall be maintained current at all times. It shall be the duty of each state entity to file a duplicate of the inventory with the State Properties Commission; and the State Properties Commission shall compile and index all such inventories into a single complete inventory of all real property, but the State Properties Commission shall maintain separate files on the property belonging to the public corporations. It shall be the further duty of each state entity to file with the State Properties Commission a duplicate of each form or other document, as provided in subsection (c) of this Code section, completed by such state entity in maintaining the inventory of the entity current; and the State Properties Commission shall utilize such forms or other documents to maintain the complete inventory of all real property current.

(c) The State Properties Commission is authorized to devise such forms or other documents as may be necessary to keep the complete inventory of real property current; and it shall be the duty of each state entity to utilize such forms and documents as directed by the State Properties Commission.

(d) The real property inventory form provided in subsection (a) of this Code section shall be completed for each parcel of real property acquired by each state entity. The form shall be completed within 30 days after the acquisition of any real property and a duplicate of same shall be forwarded to the State Properties Commission. (Code 1933, § 91-402a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 2005, p. 100, § 15/SB 158.)

OPINIONS OF THE ATTORNEY GENERAL

State Properties Commission must follow the mandates set forth in this article regarding real property inventories. 1979 Op. Att’y Gen. No. 79-14.

50-16-122. Requirements for real property acquired or disposed of by the state; filing conveyances with State Properties Commission.

(a) As used in this Code section, the term “real property” means any real property owned by the state and under the custody of any state entity, except public road, street, and highway rights of way and other real property held by the Department of Transportation pursuant to Ga. L. 1919, p. 242, art. 5, Section 5, as amended by Ga. L. 1922, p. 176, Section

1; Ga. L. 1939, p. 188, Section 1; Ga. L. 1945, p. 258, Section 1; and Ga. L. 1953, Jan.-Feb. Sess., p. 421, Section 1.

(b) All real property, the ownership of which is either acquired or disposed of by the state or any state entity thereof after March 30, 1990, shall be subject to the following requirements:

(1) The original of any conveyance acquiring real property shall be filed in the office of the State Properties Commission within 30 days after being recorded in the office of the clerk of the superior court of the county or counties wherein the real property is located. When the conveyance is presented to the State Properties Commission for filing, it shall be accompanied by four copies of the recorded plat of the real property conveyed. The State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the recorded original of the conveyance and all copies of the recorded plat and shall retain the recorded original of the conveyance and two copies of the recorded plat as a part of the permanent real property inventory records kept by such commission; but an exact copy of the recorded original of the conveyance shall be produced by the State Properties Commission and, along with a copy of the recorded plat, forwarded by such commission to the state entity acquiring the real property;

(2) When real property is acquired by eminent domain and is conveyed to the state by court order or judgment, following recording of the court order or judgment in the deed book records in the office of the clerk of the superior court of the county or counties wherein the real property is located, a certified copy of the recorded court order or judgment, along with four copies of the recorded plat of the real property conveyed, shall be filed in the office of the State Properties Commission. The State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the certified copy of the recorded court order or judgment and all copies of the recorded plat and shall retain the certified copy and two copies of the recorded plat as a part of the permanent real property inventory records kept by such commission; but an exact copy of the certified copy of the recorded court order or judgment shall be produced by the State Properties Commission and, along with a copy of the recorded plat, forwarded by such commission to the state entity acquiring the real property;

(3)(A) The original of any fully executed conveyance disposing of real property, except an Act or Resolution Act of the General Assembly, shall be filed in the office of the State Properties Commission before being delivered to the purchaser thereof for recording in the office of the clerk of the superior court of the county or counties wherein the real property is located. When the conveyance is presented to the State

Properties Commission for filing, it shall be accompanied by four copies of the plat of the real property conveyed. Though it is encouraged, it is not required that the plat be either already recorded in or eligible to be recorded in the plat book records in the office of the clerk of the superior court of the county or counties wherein the real property is located. The commission shall index and affix both the commission's stamp and the assigned real property inventory number on the original of the conveyance and all copies of the plat. The State Properties Commission shall then cause the conveyance to be duplicated. The duplicate of the conveyance and two copies of the plat shall be retained by the State Properties Commission as a part of the permanent real property inventory records kept by such commission. The original of the conveyance and a copy of the plat shall be delivered to the purchaser of the real property. Upon receiving the original of the conveyance and a copy of the plat, the purchaser of the real property may then have the original of the conveyance and, if necessary and eligible for recording, the copy of the plat recorded in the office of the clerk of the superior court of the county or counties wherein the real property is located.

(B) The General Assembly may vary or authorize the variance of the requirements of subparagraph (A) of this paragraph in any enactment, including an Act or Resolution Act, authorizing or directing a disposition of real property; and

(4) When real property is conveyed by an Act or Resolution Act of the General Assembly, the State Properties Commission shall obtain from the office of the Secretary of State a certified copy of the Act or Resolution Act and retain the same as a part of the permanent real property inventory records kept by such commission. As a part of such retention, the State Properties Commission shall index and affix both the commission's stamp and the assigned real property inventory number on the certified copy of the Act or Resolution Act.

(c) The documents which are required to be maintained by the State Properties Commission as a part of the permanent real property inventory records kept by such commission, as provided by paragraphs (2) through (4) of subsection (b) of this Code section, shall be used by the State Properties Commission in such manner as it shall determine best in maintaining the real property inventory. (Code 1933, § 91-403a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1982, p. 3, § 50; Ga. L. 1985, p. 1424, § 1; Ga. L. 1986, p. 1483, § 1; Ga. L. 1990, p. 662, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2005, p. 100, § 15/SB 158.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "(4)" was substituted for "(5)" in subsection (c).

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1 et seq. **C.J.S.** — 76 C.J.S., Records, § 1 et seq.

50-16-123. Conveyances and condemnation orders to be filed with State Properties Commission.

A copy of all conveyances for the acquisition and disposition of real property held or owned by any state entity shall be filed with the State Properties Commission within 30 days after the conveyance in an acquisition has been recorded in the office of the clerk of the superior court in the county in which the land is located and within 30 days after the conveyance in a disposition has been dated, executed, and delivered. When real property is acquired by condemnation by any state entity, a certified copy of the court order vesting title in such state entity shall be filed with the State Properties Commission within 30 days after the date of the court order. (Code 1933, § 91-404a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1986, p. 1483, § 2; Ga. L. 2005, p. 100, § 15/SB 158.)

50-16-124. State entities to compile information for an inventory of all state owned or leased facilities and real property.

Beginning July 1, 2005, each state entity shall compile information on all state facilities, real property, and state leases under the custody or control of such state entity necessary for the compilation of an inventory of all state owned or leased facilities and real property; provided, however, that all improvements acquired for public works that will ultimately be disposed of are excluded from the requirements of this part. On or before October 1, 2005, and as changes occur, but by no later than such date annually, each state entity shall send such information to the commission. The commission shall develop the format for the compilation and reporting of the inventory. (Code 1981, § 50-16-124, enacted by Ga. L. 2005, p. 100, § 15/SB 158.)

50-16-125. Rules and regulations authorized.

The State Properties Commission is authorized and directed to promulgate such rules and regulations as may be necessary to carry out this part, provided such rules and regulations are not in conflict with this part. (Code 1933, § 91-405a, enacted by Ga. L. 1970, p. 672, § 1; Ga. L. 1986, p. 1483, § 3; Ga. L. 2005, p. 100, § 15/SB 158.)

Editor's notes. — Ga. L. 2005, p. 100, § 15, renumbered former Code Section 50-16-124 as present Code Section 50-16-125.

PART 2

ANNUAL INVENTORY

50-16-140. "Proper authority" defined.

The "proper authority" referred to in this part is the Governor for all officers of the state and the county commissioners or other officers having charge of county matters for all officers of the county. (Ga. L. 1882-83, p. 126, § 5; Civil Code 1895, § 279; Civil Code 1910, § 314; Code 1933, § 91-805.)

JUDICIAL DECISIONS

Sale of unserviceable property. — When any public property has become unserviceable, the Governor may order the property sold. But no power conferred upon the Governor by the Code authorizes the Governor's consent to the sale of any property of the state, or any easement or interest in the

state's property. The power to dispose of property belonging to the state is vested in the legislature. *Western Union Tel. Co. v. Western & A.R.R.*, 142 Ga. 532, 83 S.E. 135 (1914).

Cited in *Jackson v. Gasses*, 230 Ga. 712, 198 S.E.2d 657 (1973).

OPINIONS OF THE ATTORNEY GENERAL

Granting of easements to county. — Governor may grant easement to county for road purposes over state property which has become unserviceable. 1945-47 Op. Att'y Gen. p. 549.

Disposal of unserviceable harvested forest products. — If harvested forest products are unserviceable and cannot be beneficially or advantageously used for park purposes under all of the circumstances, the Governor may direct such forest products to be sold or otherwise disposed of under such restrictions and conditions which the Governor may deem advisable for the best interest and protection of the state, and the funds derived therefrom paid into the state treasury. 1950-51 Op. Att'y Gen. p. 310.

Determination of unserviceable property. — Authority to determine whether property at Georgia Training School for Girls is unserviceable and should be disposed of is vested by General Assembly in Governor, not

Department of Human Resources. 1962 Op. Att'y Gen. p. 400.

Discussion of circumstances under which legislative authority for sale not required. — See 1962 Op. Att'y Gen. p. 474.

Commissioner's authority limited. — Director of the Highway Department (now commissioner of transportation) would not have the power or authority to declare any part of a right of way upon which there is maintained a road as unserviceable. That right seems to be lodged with the Governor when dealing with state property. 1945-47 Op. Att'y Gen. p. 545.

Private individual may lease unserviceable state park. — State park may be leased to a private individual only if the Governor determines that the park has become unserviceable to the state. 1945-47 Op. Att'y Gen. p. 330.

Ability of county commissioners to lease county property. — See 1977 Op. Att'y Gen. No. U77-3.

50-16-141. Inventory required of state and county officers; entry of inventory into book.

All state and county officers on or before January 15 of each year shall make a complete inventory on oath of all the public property in their

charge and shall enter the same in a book kept for that purpose. (Ga. L. 1882-83, p. 126, § 1; Civil Code 1895, § 275; Civil Code 1910, § 310; Code 1933, § 91-801.)

OPINIONS OF THE ATTORNEY GENERAL

No conveyance without specific authority. — Under former Code 1933, §§ 91-801 and 91-802 (see O.C.G.A. §§ 50-16-141 and 50-16-142), all state officers are required to make an inventory of all public property in their charge and to account for the property to the proper authority succeeding such an officer; therefore, a public officer cannot convey state property from the state to another person unless such officer has been given specific authority by some Act or resolution of the General Assembly. 1945-47 Op. Att’y Gen. p. 545.

50-16-142. Receipt for property received from predecessor in office; accounting for property not turned over.

When any officer shall vacate his office, he shall take a receipt from his successor for all property turned over to the successor, which receipt shall be entered in the inventory book; and he shall satisfactorily account to the proper authority for any not turned over. (Ga. L. 1882-83, p. 126, § 2; Civil Code 1895, § 276; Civil Code 1910, § 311; Code 1933, § 91-802.)

OPINIONS OF THE ATTORNEY GENERAL

No conveyance without specific authority. — Under former Code 1933, §§ 91-801 and 91-802 (see O.C.G.A. §§ 50-16-141 and 50-16-142), all state officers are required to make an inventory of all public property in their charge and to account for the property to the proper authority succeeding such an officer; therefore, a public officer cannot convey state property from the state to another person unless such officer has been given specific authority by some Act or resolution of the General Assembly. 1945-47 Op. Att’y Gen. p. 545.

RESEARCH REFERENCES

ALR. — Duty of outgoing officer to see that person to whom money or other property is turned over is a duly qualified successor, 106 ALR 195.

50-16-143. Examination of predecessor’s inventories; report.

Every officer, within three months after taking charge of his office, shall examine the inventories of his predecessor and make a report upon the same to the proper authority, especially reporting each article and its value not turned over or satisfactorily accounted for. (Ga. L. 1882-83, p. 126, § 3; Civil Code 1895, § 277; Civil Code 1910, § 312; Code 1933, § 91-803.)

JUDICIAL DECISIONS

Probate judge had power to lease directly ing filling station, as it was then being and to individual certain realty for use in operat- had been used for 13 years, and such a lease,

having been so executed by the ordinary (now probate judge), was not void on the ground that the lease was not authorized by law, or that the interest thereby created extended beyond the term of the ordinary

(now probate judge) then in office, or that it amounted to a commercial transaction in which the county was not authorized by law to engage. *Black v. Forsyth County*, 193 Ga. 571, 19 S.E.2d 297 (1942).

50-16-144. Sale or disposition of unserviceable property.

Reserved. Repealed by Ga. L. 2005, p. 117, § 24/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1882-83, p. 126, § 4; Civil Code 1895, § 278; Civil Code 1910, § 313; Civil Code 1933, § 91-804.

50-16-145. Actions against public officers for violations of part.

Any public officer who violates any one or more of the provisions of this part shall be liable to be ruled by the proper authority in the superior court in the same manner as the sheriffs and be subject to an action on his bond for the value of all public property not turned over or satisfactorily accounted for, provided that this and the preceding Code sections of this part shall not be construed to repeal any laws for the recovery of public property or the value thereof or for the punishment of any public officer who refuses, fails, or neglects to turn over or satisfactorily account for the same. (Ga. L. 1882-83, p. 126, § 7; Civil Code 1895, § 280; Civil Code 1910, § 315; Code 1933, § 91-806; Ga. L. 1982, p. 3, § 50.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 336.

ALR. — Personal liability of public officer or sureties on his bond for nonperformance or improper performance of a duty imposed upon a board or corporate body of which he is a member, 123 ALR 756.

Liability of public officer or his bond for loss of public funds due to insolvency of bank in which they were deposited, 155 ALR 436.

PART 3

CENTRAL INVENTORY OF PERSONAL PROPERTY

50-16-160. Department of Administrative Services to establish and maintain inventory; state employees to furnish information; inspection and copies of records.

(a) It shall be the duty of the Department of Administrative Services to establish and maintain an accurate central inventory of movable personal property owned by the state and any offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state; and it shall be the duty of each officer and employee thereof to furnish the

Department of Administrative Services full information for such inventory and otherwise assist it in establishing and maintaining the inventory.

(b) The inventory shall be maintained on a current basis; and state officers and employees shall furnish the Department of Administrative Services such information as may be required by it to keep the inventory current.

(c) The inventory records shall be available for inspection at all times during normal working hours; and copies of the inventory records or any part thereof shall be provided to the Governor and the General Assembly, or committees thereof, upon request. (Code 1933, § 91-801a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 1972, p. 480, § 1; Ga. L. 2005, p. 117, § 26/HB 312.)

50-16-161. Part applicable to movable personal property; determination to include or exclude items from inventory binding.

Reserved. Repealed by Ga. L. 2005, p. 117, §§ 27, 28/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1933, § 91-802a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 1972, p. 480, § 1; Ga. L. 1979, p. 1295, § 1; Ga. L. 1986, p. 826, § 1; Ga. L. 1989, p. 468, § 1; Ga. L. 2003, p. 313, § 2.

50-16-161.1. “Movable personal property” defined; inclusion or exclusion of items from inventory.

Repealed by Ga. L. 2003, p. 313, § 6, effective June 30, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-16-161.1, enacted by Ga. L. 2003, p. 313, § 3.

50-16-162. Rules and regulations.

The state accounting officer is authorized and directed to adopt and promulgate such rules and regulations establishing those items of personal property required to be kept on the inventory records of all offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state as may be necessary to carry out this part. (Code 1933, § 91-803a, enacted by Ga. L. 1971, p. 400, § 1; Ga. L. 2005, p. 117, § 29/HB 312.)

50-16-163. Power to examine books, records, papers, or personal property of state entities to ensure compliance.

The Department of Administrative Services or the state accounting officer shall have the power to examine books, records, papers, or personal

property of offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state for the purposes of ensuring compliance with this part. (Code 1981, § 50-16-163, enacted by Ga. L. 2005, p. 117, § 30/HB 312; Ga. L. 2006, p. 72, § 50/SB 465.)

ARTICLE 7

COMMISSION ON CONDEMNATION OF PUBLIC PROPERTY

Law reviews. — For annual survey of local government law, see 38 Mercer L. Rev. 289 (1986). For annual survey of law of real property, see 38 Mercer L. Rev. 319 (1986).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, § 76 et seq. **C.J.S.** — 29A C.J.S., Eminent Domain, § 88.

50-16-180. Definitions.

As used in this article, the term:

(1) “Commission” means the State Commission on the Condemnation of Public Property created by Code Section 50-16-181.

(2) “Public property” means any real property located within the State of Georgia in which a legal or equitable interest is held by:

(A) The State of Georgia or any department, division, board, bureau, commission, or other agency of the executive branch of state government;

(B) Any county, municipality, county or independent school district, or other political subdivision of the state or any agency of any such political subdivision;

(C) Any public authority or other public corporation which is a body politic of the state or of any county, municipality, or other political subdivision of the state; or

(D) Any governmental body or governmental entity of this state not covered by subparagraph (A), (B), or (C) of this paragraph.

(3) “State agency” means the State of Georgia; any department, division, board, bureau, commission, or other agency of the executive branch of state government, excluding the Department of Transportation and the Board of Regents of the University System of Georgia, which under the laws of the state has the power and authority to acquire private property by condemnation and the power of eminent domain; or any state authority which under the laws of the state has the power and authority to acquire private property by condemnation and the power of

eminent domain. (Code 1981, § 50-16-180, enacted by Ga. L. 1986, p. 1187, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the subsection designation “(a)” was deleted since this Code section contains no subsection (b).

Law reviews. — For annual survey of local government law, see 43 Mercer L. Rev. 317 (1991).

50-16-181. Creation; membership; officers; quorum; voting requirements; call, notice, and minutes or transcripts of meetings; seal; bylaws; expenses.

(a) There is created the State Commission on the Condemnation of Public Property consisting of the Governor, ex officio; Lieutenant Governor, ex officio; Secretary of State, ex officio; Commissioner of Agriculture, ex officio; Commissioner of Insurance, ex officio; state auditor, ex officio; and the Commissioner of Labor, ex officio.

(b) The Governor shall be the chairman of the commission and the Lieutenant Governor shall be the vice-chairman. Four members of the commission shall constitute a quorum. No vacancy on the commission shall impair the right of the quorum to exercise the powers and perform the duties of the commission. With the sole exception of approving the condemnation of public property, which approval shall require four affirmative votes of the membership of the commission present and voting at any meeting, the business, powers, and duties of the commission may be transacted, exercised, and performed by a majority vote of the commission members present and voting at a meeting when more than a quorum is present and voting or by a majority vote of a quorum when only a quorum is present and voting at a meeting. An abstention in voting shall be considered as that member not being present and not voting in the matter on which the vote is taken.

(c) Meetings shall be held on the call of the chairman, vice-chairman, or two commission members whenever necessary to the performance of the duties of the commission. Minutes or transcripts shall be kept of all meetings of the commission. Each commission member shall be given, not less than three days prior to the meeting, written notice of the date, time, and place of each meeting of the commission.

(d) The commission shall adopt a seal for its use and may adopt bylaws for its internal government and procedures.

(e) Members of the commission shall receive only their traveling and other actual expenses incurred in the performance of their official duties as commission members. (Code 1981, § 50-16-181, enacted by Ga. L. 1986, p. 1187, § 1.)

50-16-182. Powers and duties.

The commission, in addition to other powers and duties set forth in this article, shall have the power and duty to approve the acquisition of public property by condemnation and the power of eminent domain by the Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency. (Code 1981, § 50-16-182, enacted by Ga. L. 1986, p. 1187, § 1.)

JUDICIAL DECISIONS

Constitutionality. — The authority granted the State Commission on the Condemnation of Public Property does not amount to an improper delegation of legislative power and does not violate separation-of-powers principles. *DOT v. City of Atlanta*, 260 Ga. 699, 398 S.E.2d 567 (1990).

50-16-183. Procedure for acquisition of public property by condemnation.

(a) If the Department of Transportation; the Board of Regents of the University System of Georgia; or a state agency, acting by and through the State Properties Commission, needs to acquire public property or any interest in public property in carrying out its duties and responsibilities, such public property or interest therein may be acquired by condemnation and the power of eminent domain. The procedures to be followed in such acquisitions shall be those set forth in the laws applicable to the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, respectively, relating to the acquisition of public property or any interest therein by condemnation and the power of eminent domain. In addition to the requirements and procedures set forth in such laws, the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, shall not acquire public property or any interest therein by condemnation until such acquisition has been approved by the commission as provided in this Code section; provided, however, that the commission's approval shall not be required if the interest held by the governmental entity specified in paragraph (2) of Code Section 50-16-180 in the property is a tax lien, a mortgage, or both.

(b) The acquisition of public property or an interest therein by condemnation by the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, shall first be approved by the commission. If the Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency, wishes to acquire public property or an interest therein by condemnation, it shall apply to the commission for

approval of such acquisition. The commission may require the submission of such information by the Department of Transportation; the Board of Regents of the University System of Georgia; and the State Properties Commission, acting for and on behalf of a state agency, and by the owner or representatives of the owner of the public property as the commission may reasonably require for the consideration of the application. If the commission determines that the acquisition of the public property by condemnation is reasonable, necessary, and in the public interest, it shall grant its approval for such acquisition. The determination of the commission shall be final. The commission shall make its determination within 30 days after the commission receives the information required by the commission for the consideration of the application of the state agency and in no event longer than 90 days after receipt of the application. If the commission approves the condemnation, it shall forward a resolution to that effect to the applicant seeking such approval.

(c) When the approval of the acquisition of public property or an interest therein by condemnation is granted by the commission, the Department of Transportation; the Board of Regents of the University System of Georgia; or the State Properties Commission, acting for and on behalf of a state agency, may acquire the public property or interest therein pursuant to the procedures specified in the applicable laws. A copy of the resolution approving the acquisition adopted by the commission shall accompany the notice of condemnation and shall accompany any condemnation petition filed in superior court.

(d) Consistent with the provisions of this article, the commission may adopt such rules and regulations as may be necessary to enable the commission to carry out effectively and efficiently the powers and duties assigned to the commission by this article. The commission may utilize the resources of any department or agency of the state, including specifically the State Properties Commission, to assist it in making any determinations required by the provisions of this article and may appoint such hearing officers or other investigators as it deems proper to receive public comment and make reports or recommendations to the commission.

(e) The commission shall not be subject to Chapter 13 of this title, known as the “Georgia Administrative Procedure Act.” (Code 1981, § 50-16-183, enacted by Ga. L. 1986, p. 1187, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 2005, p. 60, § 50/HB 95.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “and” was substituted for “an” following “acting for” in the first sentence of subsection (c) and “this title” was substituted for “Title 50” in subsection (e).

JUDICIAL DECISIONS

Constitutionality. — The authority granted the State Commission on the Condemnation of Public Property does not amount to an improper delegation of legis-

lative power and does not violate of Atlanta, 260 Ga. 699, 398 S.E.2d 567
separation-of-powers principles. DOT v. City (1990).

CHAPTER 17

STATE DEBT, INVESTMENT, AND DEPOSITORIES

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tion, or reward for depositing state money.

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Article 5

Interest Rate Management

50-17-100. Definitions.

Sec.

50-17-101.

Guidelines, rules, and regulations for interest rate management plans and programs; state parties authorized to enter into, modify, or terminate interest rate management plans; disposition of payments under agreements; obligations, terms, and conditions; agency for state and oversight of the commission.

50-17-102.

Interest rate management plans.

50-17-103.

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50-17-104.

Information required in annual financial statements.

50-17-105.

Applicability of state law; jurisdiction.

Cross references. — State debt generally, Ga. Const. 1983, Art. VII, Sec. IV.

ARTICLE 1

GENERAL PROVISIONS

50-17-1. Use of facsimile signatures on public securities authorized.

(a) Public securities authorized to be issued and delivered at any one time may be executed with an engraved, imprinted, stamped, or otherwise reproduced facsimile of any signature, seal, or other means of authentication, certification, or endorsement required or permitted to be recorded thereon if so authorized by the board, body, or officer empowered by law to authorize the issuance of such securities. In addition to the foregoing, the clerk of the superior court of each county of this state may authorize the execution of any public securities, as defined in subsection (b) of this Code section, requiring or permitting his signature, with an engraved, imprinted, stamped, or otherwise reproduced facsimile of such signature and with an engraved, imprinted, stamped, or otherwise reproduced facsimile of the seal of the superior court of which he is clerk.

(b) The term “public securities,” as used in this Code section, means bonds, notes, or other obligations for the payment of money issued by this state, by its political subdivisions, or by any department, agency, or other instrumentality of this state or any of its political subdivisions.

(c) This Code section shall be permissive only and shall in no instance be mandatory. (Ga. L. 1958, p. 689, §§ 1-3; Ga. L. 1977, p. 633, § 1; Ga. L. 1983, p. 839, § 3.)

Law reviews. — For article discussing tax-exempt financing in Georgia, see 18 Ga. St. B.J. 20 (1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 21 et seq., 171. **C.J.S.** — 10 C.J.S., Bills and Notes, §§ 3, 73.

50-17-2. Agreements to resell or repurchase United States government obligations at stated rate of interest; delivery and safekeeping of such obligations; investment in authorized securities.

(a) Agencies, authorities, boards, public corporations, instrumentalities, retirement systems, and other divisions of state government authorized to invest in direct obligations of the United States government or in obligations unconditionally guaranteed by agencies of the United States government may do so by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the purchasing state entity or its agent, clearly indicating the interest of the purchasing state entity.

(b) In addition to the authorization in subsection (a) of this Code section, the director of the Office of Treasury and Fiscal Services may invest in the securities authorized for direct investment by subsection (b) of Code Section 50-17-63 by selling and purchasing such obligations under agreements to resell or repurchase the obligations at a date certain in the future at a specific price which reflects a premium over the purchase or selling price equivalent to a stated rate of interest. Delivery of the obligations purchased may be made by deposit through book entry in a safekeeping account maintained by the seller of the securities, in the name of the Office of Treasury and Fiscal Services or its agent, clearly indicating the interest of the Office of Treasury and Fiscal Services. (Ga. L. 1980, p. 303, § 1; Ga. L. 1997, p. 569, § 2.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 306 (1997).

OPINIONS OF THE ATTORNEY GENERAL

Reverse repurchase agreements authorized. — O.C.G.A. § 50-17-2(a) authorizes both selling and purchasing with a commitment to repurchase or resell. 2003 Op. Att’y Gen. No. 2003-10.

ARTICLE 2

STATE FINANCING AND INVESTMENT

Cross references. — Appropriations, Ga. Const. 1983, Art. III, Sec. IX.

50-17-20. Short title.

This article shall be known and may be cited as the “Georgia State Financing and Investment Commission Act.” (Ga. L. 1973, p. 750, § 1; Ga. L. 2002, p. 415, § 50.)

50-17-21. Definitions.

As used in this article, the term:

(1) “Commission” means the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution, consisting of the Governor, the President of the Senate, the Speaker of the House of Representatives, the state auditor, the Attorney General, the director of the Office of Treasury and Fiscal Services, and the Commissioner of Agriculture, and declared an agency and instrumentality of the state.

(2) “Constitution” means the Constitution of the State of Georgia of 1983.

(3) “Financial advisory matters” means all matters pertaining to the issuance of state debt and state authority bonds and the investment of funds created by the issuance of such debt or bonds and the performing of ministerial services in connection with the issuance, marketing, and delivery of all such debt or bonds. Financial advice shall include the development and recommendation to state authorities of a financial plan which will provide state authorities with required funds.

(4) “Fiscal officer of the state” means the director of the Office of Treasury and Fiscal Services or such other officer as may be designated by a valid Act of the General Assembly to perform the functions of such director with respect to public debt.

(5) “General obligation debt” means obligations of this state issued pursuant to this article to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equip-

ment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945, adopted November 8, 1960, for which the full faith, credit, and taxing power of the state are pledged for the payment thereof. "General obligation debt" also means obligations of this state issued to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. "General obligation debt" further means debt incurred to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems.

(6) "Guaranteed revenue debt" means revenue obligations issued by an instrumentality of the state pursuant to this article to finance toll bridges, toll roads, and any other land public transportation facilities or systems and water and sewer facilities or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes, the payment of which has been guaranteed by the state as provided in this article.

(7) "Public debt" means any debt authorized by Article VII, Section IV of the Constitution.

(8) "Sinking fund" means the State of Georgia General Obligation Debt Sinking Fund established by this article.

(9) "State authorities" means the following instrumentalities of the state: Georgia Building Authority, Georgia Building Authority (Hospital), Georgia Building Authority (Penal), Georgia Building Authority (Markets), Georgia Education Authority (Schools), Georgia Education Authority (University), Georgia Highway Authority, State Road and Tollway Authority, Georgia Ports Authority, Georgia Development Authority, Jekyll Island—State Park Authority, Stone Mountain Memorial Association, North Georgia Mountains Authority, Lake Lanier Islands Development Authority, Groveland Lake Development Authority, Georgia Higher Education Assistance Authority, the Georgia Housing and Finance Authority, and other instrumentalities of the state created by the General Assembly and authorized to issue debt and not specifically exempt from this article. (Ga. L. 1973, p. 750, § 2; Ga. L. 1974, p. 171, § 1; Ga. L. 1979, p. 401, §§ 1-5; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 4; Ga. L. 1983, p. 1024, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1987, p. 642, § 1; Ga. L. 1988, p. 426, § 2; Ga. L. 1991, p. 1653, § 2-3; Ga. L. 1993, p. 1402, § 18; Ga. L. 2001, p. 1251, § 2-1.)

Code Commission notes. — Pursuant to inserted between "Island" and "State" in Code Section 28-9-5, in 1986, a dash was paragraph (9).

Editor's notes. — The amendment to Ga. Const. 1945, Art. VII, Sec. VI, Para. I(a), adopted November 8, 1960, referred to in paragraph (5) of this Code section, is now found in Ga. Const. 1983, Art. VII, Sec. IV, Para. III; Art. VIII, Sec. V, Para. VII; and Art. IX, Sec. III, Para. I.

The amendment to this Code section by

Ga. L. 1988, p. 426, § 2, is not in effect, since it was to become effective only upon ratification of proposed amendments to 1983 Ga. Const., Article VII, Section IV, Paragraph VII and Article X, Section I, Paragraph II at the November 1988 general election (see Ga. L. 1988, p. 2116), which proposed constitutional amendments were defeated.

OPINIONS OF THE ATTORNEY GENERAL

Employees of Stone Mountain Memorial Association are not eligible to participate in State Employees' Health Insurance Plan. 1975 Op. Att'y Gen. No. 75-6.1.

Since Stone Mountain Memorial Association is an authority of the state, association

employees, being employees of a state authority not covered by the Employees' Retirement System of Georgia, do not meet the eligibility requirements set forth in Ga. L. 1961, p. 147, § 7 (see O.C.G.A. § 45-18-7). 1975 Op. Att'y Gen. No. 75-6.1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 5, 13.

50-17-22. State Financing and Investment Commission.

(a) *Responsibilities.* Subject to the limitations contained in this article, the commission shall be responsible for the issuance of all public debt incurred hereunder, for the proper application of the proceeds of such debt to the purposes for which it is incurred, for the proper application of an appropriation to the commission for capital outlay to the purpose for which it is appropriated, and for the application and administration of this article; provided, however, that the proceeds of guaranteed revenue obligations shall be paid to the issuer thereof, and such proceeds and the application thereof shall be the responsibility of the issuer. The commission shall also be responsible for the proper disbursement of an appropriation to it for public school capital outlay, and the commission and the State Board of Education will be concurrently responsible for its proper application. The commission shall be responsible for the issuance of guaranteed revenue debt, except that bonds themselves evidencing such debt shall be in the name of the instrumentality of this state issuing the same and shall be issued and executed in accordance with the laws relative to such instrumentality and the applicable provisions of this article.

(b) *Organization.*

(1) The Governor shall serve as the chairman and chief executive officer; the presiding officer of the Senate shall serve as the vice-chairman of the commission; and the state auditor shall serve as secretary and treasurer. The chairman or vice-chairman or secretary and treasurer shall be the presiding officer at each meeting of the commission.

(2) There shall be a construction division of the commission administered by a director who shall not be a member of the commission and who shall also serve as the executive secretary for the commission. The director and the staff of the construction division shall be appointed by and serve at the pleasure of the commission, shall provide administrative support for all personnel of the commission, and shall account for and keep all records pertaining to the operation and administration of the commission and its staff. The director, as executive secretary, shall prepare agenda and keep minutes of all meetings of the commission. In construction and construction related matters, the construction division shall act in accordance with the policies, resolutions, and directives of the Georgia Education Authority (Schools) and the Georgia Education Authority (University) until such time as such policies, resolutions, or directives are changed or modified by the commission. In carrying out its responsibilities in connection with the application of any funds under its control, including the proceeds of any debt or any appropriation made directly to it for construction purposes, the commission is specifically authorized to acquire and construct projects for the benefit of any department or agency of the state or to contract with any such department or agency for the acquisition or construction of projects under policies, standards, and operating procedures to be established by the commission; provided, however, that the commission shall contract with the Department of Transportation or the Georgia Highway Authority or the State Road and Tollway Authority or any combination of the foregoing for the supervision of and contracting for design, planning, building, rebuilding, constructing, reconstructing, surfacing, resurfacing, laying out, grading, repairing, improving, widening, straightening, operating, owning, maintaining, leasing, and managing any public roads and bridges for which general obligation debt has been authorized. The construction division also shall perform such construction related services and grant administration services for state agencies and instrumentalities and for local governments, instrumentalities of local governments, and other political subdivisions as may be assigned to the commission or to the construction division by executive order of the Governor.

(3) There shall also be a financing and investment division of the commission administered by a director who shall not be a member of the commission. The director shall be appointed by and serve at the pleasure of the commission. The financing and investment division shall perform all services relating to issuance of public debt, the investment and accounting of all proceeds derived from incurring general obligation debt or such other amounts as may be appropriated from time to time to the commission for capital outlay purposes, the guaranteed revenue debt and the proceeds thereof as may be directed by the commission and the issuer, the management of all other state debt, and such financial advisory matters and general accounting duties as are not specifically assigned to

the executive secretary in paragraph (2) of this subsection and in subsection (g) of this Code section. The director of the financing and investment division shall report directly to the commission on all matters pertaining to the functions and duties assigned to the division.

(4) Members of the commission shall serve without compensation but shall receive actual expenses incurred by them in the performance of their duties. The expenses, including mileage, shall be paid on the same basis as for other state officials and employees.

(c) *Meetings.* The commission shall hold regular meetings as it deems necessary, but, in any event, not less than one meeting shall be held in each calendar quarter. The commission shall meet at the call of the chairman, vice-chairman, or secretary and treasurer or a majority of the members of the commission. Meetings of the commission shall be subject to Chapter 14 of this title, and its records shall be subject to Code Sections 50-18-70 and 50-18-71. The commission shall approve the issuance of public debt, as hereinafter provided, adopt and amend bylaws, and establish salaries and wages of employees of the commission only upon the affirmative vote of a majority of its members; all other actions of the commission may be taken upon the affirmative vote of a majority of a quorum present. A quorum shall consist of a majority of the members of the commission. If any vote is less than unanimous, the vote shall be recorded in the minutes of the commission.

(d) *Powers.* The commission shall have those powers set forth in the Constitution and the powers necessary and incidental thereto. In addition to such powers, the commission shall have power:

- (1) To have a seal and alter the same at pleasure;
- (2) To make contracts and to execute all instruments necessary or convenient, including contracts with any and all political subdivisions, institutions, or agencies of the state and state authorities, upon such terms and for such purposes as it deems advisable; and such political subdivisions, institutions, or agencies of the state and state authorities are authorized and empowered to enter into and perform such contracts;
- (3) To employ such other experts, agents, and employees as may be in the commission's judgment necessary to carry on properly the business of the commission; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge the same;
- (4) To do and perform all things necessary or convenient to carry out the powers conferred upon the commission by this article;
- (5) To make reasonable regulations or adopt the standard specifications or regulations of the Department of Transportation or the state authorities, or parts thereof, for the construction, reconstruction, building, rebuilding, renovating, surfacing, resurfacing, acquiring, leasing,

maintaining, repairing, removing, installing, planning, or disposing of projects for which public debt has been authorized, or for such other purposes as deemed necessary by the commission; and

(6)(A) To apply for, arrange for, accept, and administer federal funds for capital outlay and construction related services and for authorization or payment of public debt.

(B) Without limitation, the commission may:

(i) Deposit, or arrange for, federal funds to be deposited into the State of Georgia General Obligation Debt Sinking Fund or into the State of Georgia Guaranteed Revenue Debt Common Reserve Fund, and the fiscal officer of the state shall accept such deposits;

(ii) Arrange for the disbursement of federal funds directly to trustees, paying agents, or other persons for the payment of public debt;

(iii) Cooperate with any public agency, authority, or officer in applying for, accepting, and administering federal funds for public purposes mutual to the commission and any other agency, authority, or officer;

(iv) Apply or arrange to participate in and take all actions the commission determines appropriate to obtain the benefits of federal programs which provide tax credits, incentives, or other inducements to the state or to holders of public debt;

(v) Apply or arrange to participate in federal programs which require the allocation of funds or bonding authority among geographical areas, governmental jurisdictions and entities, or other categories, and perform such allocation unless another officer, agency, or instrumentality is explicitly authorized by state law to perform such allocation and all officers, agencies, or instrumentalities are required to provide such assistance, cooperation, and information as the commission directs related to any federal programs; and

(vi) Apply or arrange to participate in any other federal program which provides benefits consistent with state law and supportive of functions of the commission.

(C) The use of federal funds as part of the authorization for the issuance of general obligation debt or the issuance of guaranteed revenue debt shall be by appropriation as provided by law. The payment of federal funds into the sinking fund to pay annual debt service requirements shall be by appropriation or by direction of the commission in the absence of appropriation. The payment of federal funds into the State of Georgia Guaranteed Revenue Debt Common

Reserve Fund as part of the common reserve shall be by appropriation or by direction of the commission in the absence of appropriation.

(D) The commission may delegate to the fiscal officer of the state its authority to arrange for and accept federal funds as provided in this Code section.

(e) *Records.* Except for those records specifically designated in this article to be kept by the fiscal officer of the state, the commission shall be responsible for keeping the records provided for in this article and such other records as it deems necessary or convenient for the administration of this article.

(f) *Advisory and service function.*

(1) The commission is further vested with complete and exclusive authority and jurisdiction in all financial advisory matters relating to the issuance or incurrence of debt by state authorities as defined in paragraph (9) of Code Section 50-17-21; and no such state authority shall be authorized, without the approval of the commission, to employ other financial or investment advisory counsel in any matter whatsoever or to incur debt without the specific approval of the commission.

(2) When the commission performs financial advisory or construction related services, the state authority or state agency requiring such services shall reimburse the commission for such services.

(g) *Budget unit; budget.*

(1) The commission is designated a budget unit and shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(2) The executive secretary shall prepare, under the direction and supervision of the commission, any budgets, requests, estimates, records, or other documents deemed necessary or efficient for compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," to provide for the payment of personnel services, operating expense, and administration and otherwise carry out this article. The commission may but need not receive an appropriation for personnel, administrative services, and other operating expenses of the commission. The commission may but need not receive an appropriation for the costs of issuance, validation, and delivery of obligations to be incurred, including, but not limited to, trustee's fees, paying agent fees, printing fees, bond counsel fees, district attorney fees, clerk of the superior court fees, architect fees, and engineering fees, which costs and fees are dependent on the principal amount of the obligations incurred and are determined to be appropriate costs of the project or projects for which such obligations are incurred and are authorized to be paid from bond proceeds. The commission may but need not receive an appropriation for expenditures made for fees and expenses incurred in safeguarding and protecting

public health, life, and property in connection with projects for which general obligation debt has been incurred.

(h) *Retirement system.* All officers and employees of the commission shall be qualified to be and shall become members of the Employees' Retirement System of Georgia; provided, however, that any such officer or employee who was on April 13, 1973, an officer or employee of any state agency, authority, department, or instrumentality and a member or participant in any annuity or retirement program other than the Employees' Retirement System of Georgia, which person hereinafter is referred to as a "present employee," may elect to remain under such other annuity or retirement program or to transfer membership to the Employees' Retirement System of Georgia. The commission is authorized to perform and shall perform all obligations of employer if such present employee shall elect to remain under such other annuity or retirement program. A present employee electing to transfer membership to the Employees' Retirement System of Georgia under this article shall give notice of electing to transfer membership to the Board of Trustees of the Employees' Retirement System of Georgia and simultaneously therewith shall give to the governing body of the other annuity or retirement program notice that it shall transfer to the Board of Trustees of the Employees' Retirement System of Georgia the employer's and employee's contributions standing to his account. From and after the date of transfer of contributions, the present employee electing to transfer membership shall be a member of the Employees' Retirement System of Georgia with membership service and prior service credits equivalent to those he would have accrued had he been a member of the Employees' Retirement System of Georgia throughout the period of transferred creditable service. In lieu of the foregoing election, any present employee wishing to retain his rights under any private annuity or retirement program may assume responsibility for the payment of all costs of such program and may elect to become a member of the Employees' Retirement System of Georgia effective the date upon which he becomes an officer or employee of the commission. Any present employee so electing to retain his rights may also receive membership service credit and prior service credit under the Employees' Retirement System of Georgia for all or part of his service with any state agency, authority, department, or instrumentality, plus military service credit as otherwise provided by law, by paying to the Board of Trustees of the Employees' Retirement System of Georgia, on terms acceptable to the Board of Trustees, all the employee's contributions, plus regular interest thereon, which would have stood to his credit had he been a member of the Employees' Retirement System of Georgia during the period of creditable service sought to be established. In the event of the latter election, the commission shall pay all employer's contributions, plus regular interest thereon, attributable to the creditable service sought to be established. Any elections under this subsection shall be made in writing within six months from the date of appointment to office or employment by the commission.

(i) *Surety bonds.* All members and officers of the commission and such employees as the commission may designate shall be surety bonded in such amounts as determined by the commission.

(j) *Exemptions from laws.* The commission shall not be subject to the following:

(1) Articles 3 and 4 of Chapter 5 of this title;

(2) Subpart 2 of Part 2 of Article 4 of Chapter 12 of Title 45, relating to approval of contracts;

(3) Article 1 of Chapter 20 of Title 45; or

(4) Code Sections 45-12-82, 45-12-83, 45-12-89, and 45-12-92. (Ga. L. 1973, p. 750, § 3; Ga. L. 1974, p. 1213, § 1; Ga. L. 1979, p. 401, § 7; Ga. L. 1982, p. 3, § 50; Ga. L. 1988, p. 227, § 7; Ga. L. 1994, p. 97, § 50; Ga. L. 2001, p. 496, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2005, p. 642, § 3/SB 227; Ga. L. 2009, p. 139, § 11/HB 581.)

The 2009 amendment, effective April 21, 2009, in subsection (d), deleted “and” at the end of paragraph (d)(4), added “; and” at the end of paragraph (d)(5), and added paragraph (d)(6).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the hyphen in “construction related” was deleted twice in

paragraph (b)(2) and once in paragraph (f)(2).

Editor’s notes. — Ga. L. 2009, p. 139, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Georgia Works Job Creation and Protection Act of 2009.’”

JUDICIAL DECISIONS

Cited in Fuller v. State, 232 Ga. 581, 208 S.E.2d 85 (1974).

OPINIONS OF THE ATTORNEY GENERAL

Assuring local systems of gift of facilities. — Georgia State Financing and Investment Commission cannot provide any assurances that facilities financed by general obligation bonds will be given to the local school systems when the bonds are retired. 1975 Op. Att’y Gen. No. 75-51.

Commission is not required to obtain bids

on construction contracts. 1975 Op. Att’y Gen. No. 75-58.

Authority of university to issue revenue obligations. — Legal ability of the Board of Regents of the University System of Georgia to incur debt by issuing revenue obligations is doubtful. 1988 Op. Att’y Gen. No. 88-21.

RESEARCH REFERENCES

ALR. — Unemployment compensation: employer’s mandatory retirement plan, 50 ALR3d 880.

50-17-23. General obligation and guaranteed revenue debts; sinking and common reserve funds; appropriations; investments; taxation to pay debt service requirements.

(a) *General obligation debt.* General obligation debt may not be incurred until the General Assembly has enacted legislation stating the purposes, in general or specific terms, for which such issue of debt is to be incurred, specifying the maximum principal amount of the issue, and appropriating an amount at least sufficient to pay the highest annual debt service requirements for the issue. Appropriations made in each fiscal year, as provided in this subsection, for debt service purposes shall not lapse for any reason and shall continue in effect until the debt for which such appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the incurring of such debt. Following the incurring of debt in any fiscal year for any purpose for which an appropriation has been made, there shall be deposited in the sinking fund provided for in paragraph (1) of this subsection an amount equal to the highest annual debt service requirements for such debt coming due in any succeeding fiscal year. On or prior to the end of such fiscal year, the commission shall certify to the fiscal officer of the state the amount of the appropriation for any purpose which has been transferred to the sinking fund and the amount of the anticipated highest annual debt service requirement of debt authorized to be issued in such fiscal year for any purpose by resolution of the commission but which actually will be incurred in the next succeeding fiscal year. The remaining appropriation for any purpose, after deducting the aggregate amounts described in the preceding sentence, shall lapse, except that any such amount attributable to an appropriation to general obligation debt for the construction and improvement of public roads and bridges shall not lapse but shall be paid to the Department of Transportation. The General Assembly may provide in an appropriation of highest annual debt service requirements that if the commission determines not to incur the debt so authorized, the commission may expend the appropriation as capital outlay for the purposes specified in the appropriation. The appropriation as capital outlay shall lapse at the end of the fiscal year of the appropriation unless committed as provided by law. The appropriation as highest annual debt service shall expire as authorization for debt when the funds are committed as capital outlay but shall otherwise lapse as provided by law.

(1) **SINKING FUND.** The General Assembly shall appropriate to a special trust fund designated "State of Georgia General Obligation Debt Sinking Fund" such amounts as are necessary to pay annual debt service requirements on all general obligation debt incurred hereunder. The sinking fund shall be used solely for retirement of general obligation debt payable therefrom.

(2) **FAILURE TO APPROPRIATE; INSUFFICIENT MONEYS IN SINKING FUND.** If the General Assembly shall fail to make any appropriation or if for any

reason the moneys in the sinking fund are insufficient to make all payments required with respect to such general obligation debt as and when the same becomes due, the director of the Office of Treasury and Fiscal Services shall set apart from the first revenues thereafter received, applicable to the general fund of the state, such amounts as are necessary to cure any such deficiencies and shall immediately deposit the same into the sinking fund. The director of the Office of Treasury and Fiscal Services may be required to set aside and apply such revenues as aforesaid at the action of any holder of any general obligation debt incurred under this article. The obligation to make such sinking fund deposits shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976.

(3) **SINKING FUND INVESTMENTS.** The moneys in the sinking fund shall be as fully invested as practical, consistent with the requirements to make current principal and interest payments. Any such investments shall be restricted to obligations constituting direct and general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from date of purchase.

(4) **HIGHWAY APPROPRIATIONS.** Appropriations to the sinking fund for debt service requirements attributable to public debt incurred or to be incurred for construction, reconstruction, and improvement of public roads and bridges shall be considered as an appropriation for activities incident to providing and maintaining an adequate system of public roads and bridges in this state for the purpose of Article III, Section IX, Paragraph VI(b) of the Constitution.

(b) *Guaranteed revenue debt.* Guaranteed revenue debt may not be incurred until the General Assembly has enacted legislation authorizing the guarantee of the specific issue of revenue obligations then proposed, reciting that the General Assembly has determined such obligations will be self-liquidating over the life of the issue, which determination shall be conclusive, specifying the maximum principal amount of such issue, and appropriating an amount at least equal to the highest annual debt service requirements for such issue. After the General Assembly has enacted legislation authorizing the guarantee of a specific issue of revenue bonds by an instrumentality of the state or state authority, the commission shall approve the issuance of such bonds and thereafter such instrumentality or state authority shall actually authorize the issuance of its revenue bonds in accordance with the Act of the General Assembly, including amendments thereto, authorizing the issuance of revenue bonds by such instrumentality or state authority and the applicable provisions of this article.

(1) **COMMON RESERVE FUND.** Appropriations made in connection with guaranteed revenue debt shall be paid, upon the issuance of the

obligations, into a special trust fund to be designated "State of Georgia Guaranteed Revenue Debt Common Reserve Fund" to be held together with all other sums similarly appropriated as a common reserve for any payments which may be required by virtue of any guarantee entered into in connection with any issue of guaranteed revenue obligations. This Guaranteed Revenue Debt Common Reserve Fund shall be held and administered by the director of the Office of Treasury and Fiscal Services. All such appropriations for the benefit of guaranteed revenue debt shall not lapse for any reason and shall continue in effect until the debt for which the appropriation was authorized shall have been incurred; but the General Assembly may repeal any such appropriation at any time prior to the payment of the same into the common reserve fund.

(2) **INSUFFICIENT MONEYS IN COMMON RESERVE FUND.** If any payments are required to be made from the State of Georgia Guaranteed Revenue Debt Common Reserve Fund to meet debt service requirements on guaranteed revenue obligations by virtue of an insufficiency of revenues, the director of the Office of Treasury and Fiscal Services shall pay to the designated paying agent, upon certification by the issuing instrumentality as to the insufficiency of such revenues, from the common reserve fund, the amount necessary to cure such deficiency. The director of the Office of Treasury and Fiscal Services shall then reimburse such fund from the general funds of the state within ten days following the commencement of any fiscal year of the state for any amounts so paid. The director of the Office of Treasury and Fiscal Services may be required to apply such funds as aforesaid with respect to guaranteed revenue debt at the action of any holder of any such guaranteed revenue obligations. The obligation to make any such reimbursements shall be subordinate to the obligation imposed upon the fiscal officers of the state pursuant to the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and shall also be subordinate to the obligation hereinabove imposed upon the director of the Office of Treasury and Fiscal Services to make sinking funds deposits for the benefit of general obligation debt.

(3) **MINIMUM BALANCE REQUIRED; EXCESS MONEYS; INVESTMENTS.** The amount to the credit of the common reserve fund shall at all times be at least equal to the aggregate highest annual debt service requirements on all outstanding guaranteed revenue obligations entitled to the benefit of such fund. If at the end of any fiscal year of the state the fund is in excess of the required amount, the director of the Office of Treasury and Fiscal Services, upon certification of the state accounting officer, shall transfer such excess to the general funds of the state, free of such trust. The funds in the common reserve shall be as fully invested as is practical, consistent with the requirements of guaranteeing the principal and interest payments on the revenue obligations guaranteed by the state. Any such investments shall be restricted to obligations constituting direct and

general obligations of the United States government or obligations unconditionally guaranteed as to the payment of principal and interest by the United States government, maturing no longer than 12 months from the date of purchase.

(c) *Requirement for taxation.* The General Assembly shall raise by taxation each fiscal year, in addition to the sums necessary to make all payments required to be made under contracts entitled to the protection of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 and to pay public expenses, such amounts as are necessary to pay debt service requirements in such fiscal year on all general obligation debt incurred hereunder and to maintain at all times the Guaranteed Revenue Debt Common Reserve Fund in the full amount required by the Constitution and this article.

(d) *Variable rate debt.*

(1) As used in this subsection, the term “variable rate debt” means general obligation debt bearing interest at a variable interest rate.

(2) Variable rate debt may be incurred in the following manner:

(A) For purposes of calculating the highest annual debt service requirements for variable rate debt, interest may be calculated at the maximum rate of interest that may be payable during any one fiscal year, after taking into account any credits permitted in the related bond resolution, indenture, or other instrument against such amount;

(B) Any resolution authorizing general obligation debt which is variable rate debt, in lieu of stating the rate or rates at which such variable rate debt shall bear interest and the price or prices at which such variable rate bonds shall be initially sold or remarketed, in the event of purchase and subsequent resale, may provide that such interest rates and prices may vary from time to time depending on criteria established in the approving resolution, which criteria may include, without limitation, references to indices or variations in interest rates as may, in the judgment of a remarketing agent, be necessary to cause variable rate debt to be remarketable from time to time at a price equal to its principal amount and may provide for the appointment of a bank, trust company, investment bank, or other financial institution to serve as remarketing agent for such purposes. The resolution for any variable rate debt may provide that alternate interest rates or provisions for establishing alternate interest rates, different security or claim priorities, or different call or amortization provisions will apply during such times as the variable rate debts are held by a person providing credit or liquidity enhancement arrangements for such debt as authorized in subparagraph (C) of this paragraph. The resolution may also provide for such variable rate debt to bear interest at rates established pursuant to a process generally

known as an auction rate process and may provide for appointment of one or more financial institutions or investment banks to serve as auction agents and broker-dealers in connection with the establishment of such interest rates and sale and remarketing of such debt;

(C) In connection with the issuance of any variable rate debt, the state may enter into arrangements to provide additional security and liquidity for such debt, including without limitation, bond or interest rate insurance or letters of credit, bond purchase contracts, or other arrangements whereby funds are available to retire or purchase such variable rate debt, thereby assuring the ability of owners of the variable rate debt to sell or redeem such debt. The state may enter into contracts and may agree to pay fees to persons providing such arrangements, but only under circumstances where the appropriate officer has certified that he or she reasonably expects that the total interest paid or to be paid on the variable rate debt, together with the fees for the arrangements, being treated as if interest, would not, taken together, cause the debt to bear interest, calculated to its stated maturity, at a rate in excess of the rate that the debt would bear in the absence of such arrangements; and

(D) The state may enter into qualified interest rate management agreements with respect to any variable rate debt. Net payments for such qualified interest rate management agreements shall constitute interest on the variable rate debt and shall be paid from the same source as payments on the variable rate debt. During the term of any qualified interest rate management agreement, annual debt service requirements of the variable rate debt may be calculated taking into account any amounts to be paid or received pursuant to the terms of such qualified interest rate management agreement. (Ga. L. 1973, p. 750, § 4; Ga. L. 1974, p. 171, § 2; Ga. L. 1979, p. 401, §§ 8-13; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 1; Ga. L. 1990, p. 8, § 50; Ga. L. 1993, p. 1402, § 18; Ga. L. 2004, p. 886, § 6; Ga. L. 2005, p. 694, § 13/HB 293.)

Cross references. — State debt, Ga. Const. 1983, Art. VII, Sec. IV.

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 2004, “treated as” was substituted for “treated is” near the end of subparagraph (d)(2)(C).

OPINIONS OF THE ATTORNEY GENERAL

Requirements of authorized investment in securities. — Repurchase agreement transaction can be an authorized investment of the Teachers Retirement System, Employees’ Retirement System, and Georgia State Financing and Investment Commission so long as the transaction is intended by the parties to be a sale and repurchase of secu-

rities on terms under which such securities might normally be sold, the documents supporting the transaction adequately record that intention of the parties, and the securities involved are those in which the state entity is otherwise authorized to invest. 1979 Op. Att’y Gen. No. 79-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 343 et seq.

C.J.S. — 81A C.J.S., States, §§ 352, 374 et seq., 425 et seq., 440 et seq.

ALR. — Right of creditor of public body

to full or pro rata payment when fund out of which obligation is payable is insufficient to pay all like obligations of equal dignity, 90 ALR 717; 171 ALR 1033.

50-17-24. Authority to incur public debt; purposes; limitations.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as provided in this article.

(b) *Purposes for debt.*

(1) Public debt without a limit may be incurred to repel invasion, suppress insurrection, and defend the state in time of war.

(2) Public debt may be incurred to supply such temporary deficit as may exist in the state treasury in any fiscal year because of necessary delay in collecting the taxes of that year, but the debt so incurred shall not exceed, in the aggregate, 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which such debt is incurred; and any debt so incurred shall be repaid out of the taxes levied for the fiscal year in which the loan is made. Such debt shall be payable on or before the last day of the fiscal year in which it is incurred, and no such debt may be incurred in any fiscal year under this paragraph if there is then outstanding unpaid debt from any previous fiscal year which was incurred under this paragraph.

(3) Public debt for public purposes may be either general obligation debt or guaranteed revenue debt. General obligation debt may be incurred by issuing obligations to acquire, construct, develop, extend, enlarge, or improve land, waters, property, highways, buildings, structures, equipment, or facilities of the state, its agencies, departments, institutions, and those state authorities which were created and activated prior to the amendment adopted November 8, 1960, to Article VII, Section VI, Paragraph I(a) of the Constitution of 1945. General obligation debt may also be incurred to provide educational facilities for county and independent school systems and to provide public library facilities for county and independent school systems, counties, municipalities, and boards of trustees of public libraries or boards of trustees of public library systems. General obligation debt may also be incurred in order to make loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. It shall not be necessary for the state or a state authority to hold title to or otherwise be the owner of such facilities or systems. General obligation debt for these purposes may be authorized and incurred for administration and disbursement by a state authority

created and activated before, on, or after November 8, 1960. Guaranteed revenue debt may be incurred by guaranteeing the payment of revenue obligations issued by an instrumentality of the state if such revenue obligations are issued to finance toll bridges, toll roads, or any other land public transportation facilities or systems, or water or sewage treatment facilities or systems, or to make or purchase, or lend or deposit against the security of, loans to citizens of the state for educational purposes; provided, however, that in no event shall general obligation debt or guaranteed revenue debt be incurred for water or sewage treatment facilities or systems for counties or municipalities unless such facilities are financed in whole or in part through an instrumentality of the state created by the General Assembly for the purpose of assisting the state, counties, or municipalities in the financing of water or sewage treatment facilities or systems for the benefit of the citizens of Georgia. General obligation debt or guaranteed revenue debt may be incurred to fund or refund any such debt or to fund or refund any obligations issued upon the security of contracts to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable.

(c) *Limitations.* No debt may be incurred under paragraph (3) of subsection (b) of this Code section at any time when the highest aggregate annual debt service requirements for the then current year or any subsequent year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt, and the highest aggregate annual payments for the then current year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable exceed 10 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred. Within such limitation, the following limitations shall also be applicable:

(1) No guaranteed revenue debt may be incurred to finance water or sewage treatment facilities or systems when the highest aggregate annual debt service requirements for the then current year or any subsequent fiscal year of the state for outstanding or proposed guaranteed revenue debt for water or sewage treatment facilities or systems exceed 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which any such debt is to be incurred;

(2) The aggregate principal amount of guaranteed revenue debt incurred to make loans to citizens of the state for educational purposes that may be outstanding at any time shall not exceed \$18 million and the aggregate principal amount of guaranteed revenue debt incurred to make or purchase, or to lend or deposit against the security of, loans to

citizens of the state for educational purposes that may be outstanding at any time shall not exceed \$72 million; and

(3) The issuance of any funding or refunding debt pursuant to this Code section shall be subject to the 10 percent limitation provided for in this subsection to the same extent as debt incurred under this article; provided, however, that in making such computation the annual debt service requirements and annual contract payments remaining on the debt or obligations being funded or refunded shall not be taken into account.

(d) *Annual debt service requirements.* For the purposes of subsection (c) of this Code section, annual debt service requirements shall mean the total principal and interest coming due in any fiscal year of the state; provided, however, that with regard to any issue of debt incurred wholly or in part on a term basis, annual debt service requirements shall mean an amount equal to the total principal and interest payments required to retire such issue in full divided by the number of years from its issue date to its maturity date. (Ga. L. 1973, p. 750, § 5; Ga. L. 1979, p. 401, §§ 14, 15; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 5; Ga. L. 1983, p. 1024, § 2; Ga. L. 1987, p. 642, § 2; Ga. L. 1988, p. 13, § 50; Ga. L. 1994, p. 97, § 50.)

Cross references. — State debt, Ga. Const. 1983, Art. VII, Sec. IV.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “receipts” was substituted for “recipts” in paragraph (b)(2).

Editor’s notes. — The amendment to

Const. 1945, Art. VII, Sec. VI, Para. I(a), adopted November 8, 1960, referred to in paragraph (b)(3) of this Code section, is now found in Ga. Const. 1983, Art. VII, Sec. IV, Para. III; Art. VIII, Sec. V, Para. VII; and Art. IX, Sec. III, Para. I.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 92 et seq., 101 et seq.

C.J.S. — 81A C.J.S., States, §§ 328 et seq., 345 et seq., 377 et seq.

ALR. — Power and discretion of officer or board authorized to issue bonds of govern-

mental unit as regards terms or conditions to be included therein, 119 ALR 190.

Validity, under state constitution and laws, of issuance by state or state agency of revenue bonds to finance or refinance construction projects at private religious-affiliated colleges or universities, 95 ALR3d 1000.

50-17-25. Incurring public debt by resolution; sale of evidences of indebtedness; form of obligations; validation of bonds; civil claims and actions.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) *Resolutions.*

(1)(A) All actions of the commission shall be taken by resolution. Each resolution adopted in connection with authorizing public debt shall be

reduced to writing; and the executive secretary shall maintain a full and correct record of each step or proceeding had or taken in the course of authorizing and contracting public debt. Each authorizing resolution shall state each purpose of the debt it authorizes, which statement need not be more specific but shall not be more general than those purposes in or pursuant to law and the maximum principal amount authorized for each purpose. Public debt may be contracted and evidences of indebtedness issued therefor pursuant to one or more authorizing resolutions, unless otherwise provided in the resolution at any time and from time to time for any combination of purposes, in any specific amounts, at any rates of interest, for any term, payable at any intervals, at any place, in any manner, and having any other terms or conditions deemed by the commission to be necessary or useful. Unless debt is sooner incurred or unless a shorter period is provided in such resolution, every authorizing resolution shall expire one year after the date of its adoption if the debt authorized by such resolution has not been issued in whole or in part.

(B) In the event it is determined by the commission that it is to the best interest of the state to fund or refund any such public debt or obligation, the same may be accomplished by resolution of the commission without any action on the part of the General Assembly. Any appropriation made or required to be made with respect to the debt being funded or refunded shall immediately attach and inure to the benefit of the obligations to be issued in connection with such funding or refunding, to the same extent and with the same effect as though the obligation to be issued had originally been authorized by action of the General Assembly, provided that the debt incurred in connection with any such funding or refunding shall be the same as that originally authorized by the General Assembly (except that general obligation debt may be incurred to fund or refund obligations issued upon the security of contracts to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 are applicable and the continuing appropriation required to be made under such provisions of the Constitution shall immediately attach and inure to the benefit of the obligation to be issued in connection with such funding and refunding with the same force and effect as though the obligation so funded or refunded had originally been issued as a general obligation debt authorized hereunder); and provided, further, that the term of the funding or refunding issue shall not extend beyond the term of the original debt or obligation, and the total interest on the funding or refunding issue shall not exceed the total interest to be paid on the original debt or obligation. The principal amount of any debt issued in connection with such funding or refunding may exceed the principal amount being funded or refunded to the extent necessary to provide for the payment of any premium thereby incurred.

(2) An authorizing resolution may authorize the negotiation of a loan or loan agreement of any type, upon any terms, with any bank authorized to transact business in this state or with any agency of the United States government.

(3) An authorizing resolution may authorize the issuance and sale of notes or it may authorize the issuance and sale of bonds at public or private sale in such manner and for such price as the commission may determine to be for the best interests of the state.

(c) *Notice and sale.* The commission may adopt resolutions providing for the sale of evidences of indebtedness, which resolutions may provide the manner and methods of making the sale, acceptance of bids, delivery dates, and such other actions deemed necessary by the commission in the sale and delivery of the evidences of indebtedness.

(d) *Form of obligations.*

(1) Every loan agreement and every evidence of indebtedness under a loan agreement shall be executed in the name of and for the state by the chairman and secretary of the commission. Every other evidence of indebtedness, except those issued in connection with the incurring of guaranteed revenue debt, shall be executed in the name of the state by the chairman and secretary of the commission and shall be sealed with the official seal of the commission or a facsimile thereof. Coupons shall be executed by the chairman of the commission. The facsimile signature of either the chairman or the secretary, or both, may be imprinted in lieu of the manual signature if the commission so directs, and the facsimile of the chairman's signature shall be used on coupons; provided, however, that the executive secretary may sign as secretary if the commission so directs. Evidence of indebtedness and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid notwithstanding the fact that before or after the delivery thereof such person ceased to hold such office.

(2) Each bond representing guaranteed revenue debt shall have stamped or printed thereon a certificate reading as follows:

"I hereby certify that the State of Georgia guarantees full payment of this obligation and the interest hereon in accordance with its terms and has pledged the full faith, credit, and taxing power of the state to such payment."

Immediately below the certificate shall appear the facsimile signature of the secretary of the commission.

(3) Debt to be incurred at the same time for more than one purpose may be combined in one issue without stating the purposes separately, but the proceeds thereof must be allocated, disbursed, and used solely in

accordance with the original purposes and without exceeding the principal amount authorized for each purpose set forth in the authorization of the General Assembly and to the extent not so used shall be used to purchase and retire public debt.

(4) Every evidence of indebtedness shall be dated not later than the date the same was issued; shall contain a reference by date of the appropriate authorizing resolution pursuant to which the same was issued; and may, but need not, state the purpose for which the debt is being incurred. When debt is being incurred at the same time for more than one purpose, the statement "for various purposes" shall be authorized.

(5) Bonds issued as evidence of general obligation debt or guaranteed revenue debt shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County, stating the date on which the bonds were validated as hereinafter provided, and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state. The bonds may be sealed with the official seal of the Superior Court of Fulton County or a facsimile thereof.

(6) The commission is authorized to use a standardized registered bond certificate. Such bond certificate may bear the facsimile signatures of the chairman and secretary of the commission and a manual authorizing signature of the registrar or transfer agent or an agent of the registrar or transfer agent.

(e) *Validation of bonds.* Bonds issued to evidence guaranteed revenue debt shall be validated in the Superior Court of Fulton County as provided in the Act creating the instrumentality issuing guaranteed revenue debt. Bonds issued to evidence general obligation debt shall be validated in the Superior Court of Fulton County as provided herein, notwithstanding any provisions of Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," to the contrary.

(1) NOTICE TO DISTRICT ATTORNEY. The commission shall give notice to the Fulton County district attorney of its intention to incur general obligation debt, setting forth the principal amount of issue, the terms of the debt, the purpose, either in general or specific terms, and other terms of the debt to be incurred; provided, however, that the notice, in the discretion of the commission, in lieu of specifying the rate or rates of interest which the bonds are to bear, may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest specified in the notice or that in the event the bonds are to bear different rates of interest for different maturity dates that none of such rates will exceed the maximum rate specified in the notice. The notice, signed by the chairman, vice-chairman, or secretary shall be served to the district attorney.

(2) DISTRICT ATTORNEY TO FILE ACTION. Within 20 days from the date of service of the notice provided for in paragraph (1) of this subsection, the district attorney shall prepare and file in the office of the clerk of the Superior Court of Fulton County a complaint directed to the superior court, in the name of the state and against the commission, setting forth service of the notice, the amount of the bonds to be issued, for what purpose or purposes to be issued, what interest rate or rates they are to bear, or the maximum rate or rates of interest, how much principal and interest is to be paid annually, and when the bonds are to be paid in full; and shall obtain from the judge of the court an order requiring the commission, by its proper officers, to appear at such time and place within 20 days from the filing of the complaint, as the judge may direct, and show cause, if any exists, why the bonds should not be confirmed and validated, which complaint and order shall be served upon the commission in the manner provided by law; and to such complaint the commission shall make sworn answer within the time prescribed in this paragraph.

(3) NOTICE OF HEARING. Prior to the hearing of the case, the clerk of the Superior Court of Fulton County shall publish in a newspaper, once during each of the two successive weeks immediately preceding the week in which the hearing is to be held, a notice to the public that on the day specified in the order providing for the hearing of the case the same will be heard. Such newspaper shall be the official organ of the county in which the sheriff's advertisements appear.

(4) TRIAL OF CASE; PARTIES; JUDGMENT; APPEAL. Within the time prescribed in the order, or such further time as he may fix, the judge of the superior court shall proceed to hear and determine all questions of law and of fact in the case and shall render judgment thereon. Any citizen of this state may become a party to the proceedings at or before the time set for the hearing; and any party thereto dissatisfied with the judgment of the court confirming and validating issuance of the bonds, or refusing to confirm and validate the issuance of the bonds, may appeal from the judgment under the procedure provided by law in cases of injunction. Only a party to the proceedings at the time the judgment appealed from is rendered may appeal from such judgment. In the event no appeal is filed within the time prescribed by law or, if filed, the judgment is affirmed on appeal, the judgment of the superior court, so confirming and validating the issuance of the bonds and the security therefor, shall forever be conclusive upon the validity of the bonds.

(5) COSTS. The commission shall reimburse the district attorney for his actual costs of the case, if any. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be for each \$5,000.00 bond as follows:

First 100 bonds \$ 1.00

Bonds 101 through 500	0.25
All bonds over 500	0.10

(f) *Civil claims and actions.*

(1) Any other provisions of law to the contrary notwithstanding, this article shall govern all civil claims, proceedings, and actions respecting public debt.

(2) If the state fails to pay any public debt in accordance with its terms, an action to compel such payment may be commenced against the state by delivering a copy of the summons and the complaint to the Attorney General of the state. The place of trial of any such action shall be the Superior Court of Fulton County. If there is final judgment against the state in the action, it shall be paid as provided in Code Section 50-17-23, together with interest thereon at the rate of 7 percent per annum from the date such payment was judged to have been due until the date of payment of the judgment. (Ga. L. 1973, p. 750, § 5; Ga. L. 1979, p. 401, § 16; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 3, § 66; Ga. L. 1983, p. 839, § 6; Ga. L. 1984, p. 22, § 50; Ga. L. 1986, p. 339, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, “exists” was substituted for “exist” in paragraph (e)(2).

JUDICIAL DECISIONS

Validation petition must state purpose of bonds. — The requirement of the section is merely that the validation petition state the purpose of the bonds in general terms. *Sears v. State*, 232 Ga. 547, 208 S.E.2d 93 (1974).

Purpose of validation proceeding. — It is not the purpose of a validation proceeding to determine lawfulness of purpose for bonds. *Sears v. State*, 232 Ga. 547, 208 S.E.2d 93 (1974).

Remedy for unlawful use of proceeds. — If the public authorities should seek to use in an unlawful manner, or for an unlawful purpose, the proceeds of the bonds thus authorized, the remedy is not by a refusal to validate the bonds for the purpose for which the bonds were authorized. *Sears v. State*, 232 Ga. 547, 208 S.E.2d 93 (1974).

Cited in *Fuller v. State*, 232 Ga. 581, 208 S.E.2d 85 (1974).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 165 et seq., 195, 222 et seq., 384 et seq., 415.

C.J.S. — 81A C.J.S., States, §§ 437, 443 et seq., 454, 524 et seq.

ALR. — When limitations begin to run against actions on public securities or obligations to be paid out of special or particular fund, 50 ALR2d 271.

50-17-26. Evidences of indebtedness generally; accrual of interest; paying agent; executory contracts; audits; legal services.

(a) *Authority.* The state, through action of the commission, is authorized to incur public debt as hereinafter provided.

(b) *Registration, prepayment, cancellation, destruction, etc.*

(1) REGISTRAR. The fiscal officer of the state or his agent shall act as registrar for evidences of indebtedness registrable as to principal or interest or both. No transfer of a registered evidence of indebtedness is valid unless made on the register maintained by the fiscal officer of the state or his agent for that purpose, and the state shall be entitled to treat the registered owner as the owner of such instrument for all purposes. Payment of principal and interest, when registered as to interest, of registered instruments shall be by check to the registered owner as it appears on the register unless the commission has otherwise provided. The commission may make such other provisions respecting registration as it deems necessary or useful. The fiscal officer of the state may employ out-of-state transfer agents or in-state transfer agents, or both, to perform registration duties or payment duties, or both, as agents of the fiscal officer of the state.

(2) PREPAYMENT. The commission may authorize debt having any provision for prepayment deemed necessary or useful, including the payment of any premium.

(3) DESTROYED BONDS. If any evidence of indebtedness becomes mutilated or is destroyed, lost, or stolen, the commission shall execute and deliver a new bond or note of like date of issue, maturity date, principal amount, and interest rate per annum as the bond or note so mutilated, destroyed, lost, or stolen, upon exchange and substitution for such mutilated bond or note and in lieu of and substitution for the bond or note destroyed, lost, or stolen, upon filing with the commission evidence satisfactory to it that such bond or note has been destroyed, lost, or stolen and proof of ownership thereof and upon furnishing the commission with indemnity satisfactory to it and upon complying with other reasonable rules of the commission and paying expenses connected therewith. Any bond or note surrendered for exchange shall be canceled. As provided in connection with the issuance of replacement bonds or notes under this Code section, the commission shall have authority to print the new bonds with a validation certificate bearing the facsimile signature of the clerk of the superior court then in office; and such certificate shall have the same force and effect as in the first instance. All responsibility with respect to the issuance of any such new bonds shall be on the commission and not on the clerk, and the clerk shall have no liability in the event an overissuance occurs.

(4) INTEREST. Interest shall cease to accrue on public debt on the date that the debt becomes due for payment if the payment is made or duly provided for; but such debt and the accrued interest thereon shall continue to be public debt until 20 years overdue for payment. At that time, unless demand for their payment has been made, they shall be extinguished and shall be deemed no longer outstanding.

(5) **CANCELLATION.** Unless otherwise directed by the commission, every evidence of indebtedness and interest coupon paid or otherwise retired shall forthwith be marked "canceled" and shall be delivered by the paying agent accepting payment thereof to the commission, which shall destroy them and provide a certificate of destruction to the fiscal officer of the state.

(6) **RECORDS.** The fiscal officer of the state or his agent shall maintain records containing a full and correct description of each evidence of indebtedness issued, identifying it and showing its date, issue, amount, interest rate, payment dates, payments made, registration, destruction, and every other relevant transaction. The use of depositories or immobilized or book-entry delivery systems, or both, may be authorized by the commission.

(7) **CONFIDENTIALITY.** Records maintained by the commission, the fiscal officer of the state or his agents, or by any paying agent appointed by the commission which reveal the names or identities of registered holders of bonds or notes shall not be deemed public records. Any information concerning the identity or the name of registered holders of bonds or notes shall be released only upon direction or authorization by the commission.

(c) *Paying agent.* The commission may appoint one or more paying agents for each issue of bonds or notes. The fiscal officer of the state may be designated the sole paying agent or a copaying agent for any issue of bonds or notes. Every other such paying agent shall be an incorporated bank or trust company authorized by the laws of the United States or of the state in which it is located to do a banking or trust business. There may be deposited with a paying agent, in a special account for such purposes only, a sum estimated to be sufficient to enable the paying agent to pay the principal and interest on public debt which will come due not more than 15 days after the date of the deposit. The commission may make such other provisions respecting paying agents as it deems necessary or useful and may enter into a contract with any paying agents containing such terms, including its compensation and conditions in regard to the paying agents, as it deems necessary or useful.

(d) *Executory contracts.* After adoption of an authorizing resolution for a purpose which is to be accomplished wholly or in part through performance of an executory contract by some other contracting party, the contract may be entered into prior to the contracting of the debt authorized by the resolution with like effect as if the funds necessary for payments on the contract were readily available. In such cases, the debt authorized by the resolution shall be deemed to have been contracted pursuant to the resolution in the amount necessary to make such payments on the date the contract is entered into, and the authority of the resolution shall promptly thereafter be exercised.

(e) *Money borrowed.* All money borrowed shall be lawful money of the United States and all debts shall be payable in such money.

(f) *Evidences of indebtedness held by state funds.* All evidences of indebtedness owned or held by any state fund shall be deemed to be outstanding in all respects, and the agency having such fund under its control shall have the same rights with respect to such evidences of indebtedness as a private party; but, if any sinking fund acquires bonds which give rise to such fund, such bond shall be deemed paid for all purposes and no longer outstanding and together with any interest coupons appurtenant thereto shall be canceled. All evidence of indebtedness owned by any state fund shall be registered to the fullest extent registrable.

(g) *Audits.* The commission, together with all funds established in connection with public debt, shall be audited no less frequently than annually by an independent certified public accountant to be selected by a majority of the commission. Copies of such audit shall be given to both houses of the General Assembly and shall be available upon request to interested parties, including, specifically but without limitation, the holders of evidences of indebtedness. The commission shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which it deems to be most effective and efficient.

(h) *Legal services.* The Attorney General shall provide legal services for the commission, and in connection therewith the provisions of reimbursement for legal services of Code Sections 45-15-13 through 45-15-16 shall be fully applicable; provided, however, that the chairman of the commission shall be the one to provide the advance approval for the amount of such services and expenses. (Ga. L. 1973, p. 750, § 5; Ga. L. 1974, p. 171, § 3; Ga. L. 1979, p. 401, § 17; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 839, § 7; Ga. L. 2005, p. 1036, § 46/SB 49.)

RESEARCH REFERENCES

Am. Jur. 2d. — 52 Am. Jur. 2d, Lost and Destroyed Instruments, §§ 1, 3. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 175, 382.

C.J.S. — 81A C.J.S., States, §§ 438, 448.

ALR. — Right to call governmental bonds in advance of their maturity, 109 ALR 988.

50-17-27. Application and investment of public debt proceeds by commission and by the Environmental Facilities Authority.

(a) The commission shall be responsible for the proper application of the proceeds of public debt issued under this article to the purposes for which it is incurred; provided, however, that the proceeds from guaranteed revenue obligations shall be paid to the issuer thereof, and the proceeds and the application thereof shall be the responsibility of the issuer.

(b) Proceeds received from the sale of bonds evidencing general obligation debt shall be held in trust by the commission and disbursed promptly by the commission in accordance with the original purpose set forth in the authorization of the General Assembly and in accordance with rules and regulations established by the commission. Bond proceeds and other proceeds held by the commission shall be as fully invested as is practical, consistent with the proper application of such proceeds for the purposes intended. Investments shall be limited to general obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government, or to obligations issued by the Federal Land Bank, Federal Home Loan Bank, Federal Intermediate Credit Bank, Bank for Cooperatives, Federal Farm Credit Banks regulated by the Farm Credit Administration, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, or to tax exempt obligations issued by any state, county, municipal corporation, district, or political subdivision, or civil division or public instrumentality of any such government or unit of such government, or to prime bankers' acceptances, or to the units of any unit investment trusts the assets of which are exclusively invested in obligations of the type described in this subsection, or to the shares of any mutual fund the investments of which are limited to securities of the type described in this subsection and distributions from which are treated for federal income tax purposes in the same manner as the interest on said obligations, provided that at the time of investment such obligations or the obligations held by any such unit investment trust or the obligations held or to be acquired by any such mutual fund are limited to obligations which are rated within one of the top two rating categories of any nationally recognized rating service or any rating service recognized by the commissioner of banking and finance, and no others, or to securities lending transactions involving securities of the type described in this subsection. Income earned on any such investments or otherwise earned by the commission shall be retained by the commission and used to purchase and retire any public debt or any bonds or obligations issued by any public agency, public corporation, or authority which are secured by a contract to which the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 is applicable and may be used to pay operating expenses of the commission. However, in order to provide for contingencies, efficiency, and flexibility, the commission may agree by contract or grant agreement with county and independent school systems that income earned during grant administration on a direct appropriation of state funds to the commission for public school capital outlay will be applied to the capital outlay purposes of the appropriation. Otherwise, the interest on direct appropriations to the commission shall be deposited into the treasury.

(c) Notwithstanding subsections (a) and (b) of this Code section, the Georgia Environmental Facilities Authority shall be the state authority

responsible for the proper application of the proceeds of public debt issued under this article for the purpose of making loans to counties, municipal corporations, political subdivisions, local authorities, and other local governmental entities for water or sewerage facilities or systems. Proceeds from the sale of such bonds shall be paid to the authority, which shall hold them in trust for their original purposes as set forth in the authorization of the General Assembly, as provided by law and in accordance with the rules and regulations established by the authority. Bond proceeds held by the authority shall be as fully invested as is practicable, consistent with the proper application of such proceeds for the purposes intended, and the authority shall contract with the Georgia State Financing and Investment Commission for the purpose of investing any such bond proceeds and the income therefrom. Investments shall be limited to those permitted to the authority or the Georgia State Financing and Investment Commission in the laws providing for their creation and activities. Income earned on any such investments of bond proceeds or the income therefrom shall be retained by the authority and used by it for its public purposes as provided by law. (Ga. L. 1973, p. 750, § 6; Ga. L. 1974, p. 1213, § 2; Ga. L. 1979, p. 401, § 18; Ga. L. 1980, p. 555, § 1; Ga. L. 1983, p. 3, § 66; Ga. L. 1986, p. 339, § 3; Ga. L. 1987, p. 642, §§ 3, 4; Ga. L. 2001, p. 496, § 2; Ga. L. 2003, p. 359, § 1; Ga. L. 2004, p. 319, § 2.)

50-17-28. Bond security contracts prohibited.

The state and all institutions, departments, and agencies of the state are prohibited from entering into any contract, except contracts pertaining to guaranteed revenue debt, with any public agency, public corporation, authority, or similar entity if the contract is intended to constitute security for bonds or other obligations issued by any such public agency, public corporation, or authority; and, from and after September 1, 1974, in the event any contract between the state, or any institution, department, or agency of the state, and any public agency, public corporation, authority, or similar entity, or any revenues from any such contract, is pledged or assigned as security for the repayment of bonds or other obligations, then and in either such event the appropriation or expenditure of any funds of the state for the payment of obligations under any such contract shall likewise be prohibited; provided, however, that all contracts entered into prior to September 1, 1974, shall continue to have the benefit of the protection afforded by the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of Georgia of 1976 as fully and completely as though this article had not been adopted and for as long as any such contract shall remain in force and effect. Furthermore, nothing in this article is intended directly or by implication to have any effect upon any provision of any such contract establishing lien rights, priorities regarding revenues, or otherwise providing protection to the holders of obligations secured by such contracts. (Ga. L. 1973, p. 750, § 7; Ga. L. 1979, p. 401, § 19; Ga. L. 1983, p. 3, § 66.)

50-17-29. Miscellaneous pledges, authorizations, and exemptions.

(a) *Full faith and credit.* The full faith, credit, and taxing powers of the state are pledged to the payment of all public debt, and the interest thereon, incurred under this article; and all such debt and the interest thereon shall be exempt from taxation.

(b) *Negotiability.* Every evidence of indebtedness issued under this article shall be, and the same is held to have all the rights and incidences of, negotiable instruments, anything in law to the contrary notwithstanding.

(c) *Legal investments; securities for deposit.* General obligation debt and guaranteed revenue debt herein authorized are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are authorized to invest in bonds or other obligations of the state may properly and legally invest funds including capital in their control or belonging to them. Such debt is further made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state may be authorized.

(d) *State employees.* Notwithstanding the provisions of any other law, employees of the state are authorized to hold, purchase, and own bonds representing general obligation debt or guaranteed revenue debt issued under this article.

(e) *Exemption from taxation.*

(1) Except as otherwise provided in paragraph (2) of this subsection, no city, county, municipality, or other political subdivision of this state shall impose any tax, assessment, levy, license fee, or other fee upon any contractors or subcontractors as a condition to or result of the performance of a contract, work, or services by such contractors or subcontractors in connection with any project being constructed, repaired, remodeled, enlarged, serviced, or destroyed for, or on behalf of, the state or any of its agencies, boards, bureaus, commissions, and authorities; nor shall any city, county, municipality, or other political subdivision of this state include the contract price of or value of such contract, work, or services performed on such projects in computing the amount of any tax, assessment, levy, license fee, or other fee authorized to be imposed on any contractors or subcontractors.

(2) The exemption provided for in paragraph (1) of this subsection shall not apply to any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(3)(A) As used in this paragraph, the term:

(i) "Building and construction materials" means all building and construction materials, supplies, fixtures, or equipment, any combination of such items, and any other leased or purchased articles when the materials, supplies, fixtures, equipment, or articles are to be utilized or consumed during construction or are to be incorporated into construction work pursuant to a bona fide written construction contract.

(ii) "Local sales and use tax" means any local sales tax, local use tax, or local sales and use tax which is levied and imposed in an area consisting of less than the entire state, however authorized, including, but not limited to, such taxes authorized by or pursuant to constitutional amendment; by or pursuant to Section 25 of an Act approved March 10, 1965 (Ga. L. 1965, p. 2243), as amended, the "Metropolitan Atlanta Rapid Transit Authority Act of 1965"; by or pursuant to Article 2 of Chapter 8 of Title 48; or by or pursuant to Article 3 of Chapter 8 of Title 48.

(B) No local sales and use tax which became applicable subsequent to the time of entering into a contract as described in this subparagraph shall be collected by a county or municipality upon the sale or use of building and construction materials when the contract pursuant to which the materials are purchased or used was entered into on December 19, 1994, and a prior claim for a refund of such sales and use taxes was filed with the department on or before January 22, 1998.

(C)(i) Notwithstanding any other provision of this title or any other title to the contrary, the provisions of this subparagraph shall provide the exclusive remedy and procedure for seeking and obtaining any and all refunds for local sales and use taxes paid on the sale or use of building and construction materials. No refund shall be allowed for any such taxes or payments unless expressly authorized by this subparagraph.

(ii) The commissioner shall issue refunds for local sales and use taxes paid or due with respect to a contract specified under subparagraph (B) of this paragraph when it is shown to the

satisfaction of the commissioner that local sales and use taxes were paid pursuant to paragraph (2) of this subsection.

(D) No person shall receive a refund for local sales and use taxes paid in any case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the person seeking a refund. When a claimant is issued a refund for taxes paid, in every case where an amount equal to the amount of taxes paid has been charged to or paid by any purchaser of the claimant, the claimant shall refund to the purchaser or customer an amount equal to the refund allowed by the commissioner.

(E) No refund for taxes paid shall be allowed unless a refund claim is filed with the commissioner pursuant to subparagraph (F) of this paragraph. If, in the opinion of the commissioner, a refund claim of taxes paid pursuant to this subsection contains a false statement, the claim shall be denied. In no event shall interest be allowed on any refund under this paragraph.

(F) Each refund claim shall be filed in writing with the commissioner in the form and containing such information as the commissioner may require. The commissioner shall consider information contained in the refund claim, together with such other information as may be available, and shall approve or disapprove the refund claim and notify the claimant of such action. Any claimant whose claim is denied by the commissioner or whose claim is not decided by the commissioner within one year from the date of filing the claim shall have the right to bring an action for a refund in the superior court of such county. No action or proceeding for the recovery of a refund shall be commenced before the expiration of one year from the date of filing the refund claim unless the commissioner renders a decision on the refund claim within that time, nor shall any action or proceeding be commenced after the occurrence of the earlier of (i) the expiration of one year from the date the claim is denied, or (ii) the expiration of two years from the date the refund claim was filed. The time for filing an action for the recovery of a refund may be extended for such period as may be agreed upon in writing between the claimant and the commissioner during the period authorized for bringing an action or any extension thereof. In the event any refund claim is approved and the taxpayer has not paid other state taxes which have become due, as determined by the commissioner, the commissioner may set off the unpaid taxes against the refund. When the setoff authorized in this Code section is exercised, the refund shall be deemed granted and the amount of the setoff shall be considered for all purposes as a payment toward the particular tax debt which is being set off. Any excess refund properly allowable under this paragraph which remains after the setoff has been applied may be refunded to the taxpayer. (Ga. L. 1973, p. 750,

§ 8; Ga. L. 1979, p. 401, § 20; Ga. L. 1982, p. 3, § 50; Ga. L. 1994, p. 97, § 50; Ga. L. 1995, p. 172, § 6; Ga. L. 2000, p. 1347, § 1.)

JUDICIAL DECISIONS

Exemptions of this section were validly passed, the title to the legislation giving sufficient warning of the exemptions. *Sears v. State*, 232 Ga. 547, 208 S.E.2d 93 (1974).

Exemption from taxation. — O.C.G.A. § 50-17-29(e) evinces the legislature's intent to prohibit a county or municipality from taxing any property used by a contractor on a state project, or from getting around that prohibition by including the contract price of a state project as a basis for any other kind of authorized tax or fee. *Lunda Constr. Co. v. Clayton County*, 201 Ga. App. 106, 410 S.E.2d 446 (1991).

Phrase "any tax" in O.C.G.A. § 50-17-29(e) included local option, Metropolitan Atlanta Rapid Transit Authority, and special county sales taxes which were assessed against a contractor performing work for the state. *C.W. Matthews Contracting Co. v. Collins*, 214 Ga. App. 532, 448 S.E.2d 234 (1994).

Pursuant to O.C.G.A. § 50-17-29(e), a highway construction contractor who performed work solely for a state agency was entitled to a refund of sales and use taxes and local option taxes. *Collins v. Lunda Constr. Co.*, 214 Ga. App. 512, 448 S.E.2d 236 (1994).

Inventory and equipment of company producing asphalt for road construction were not exempt from ad valorem taxes since the property was taxed solely as a condition to or result of the performance of work for the state. *Gainesville Asphalt, Inc. v. Hall County*, 214 Ga. App. 679, 448 S.E.2d 721 (1994).

Highway construction contractor was entitled to an exemption under O.C.G.A. § 50-17-29(e) to the extent that its machinery and equipment were used in state projects in the tax year. *Gwinnett County Bd. of Tax Assessors v. APAC-Georgia, Inc.*, 215 Ga. App. 609, 451 S.E.2d 798 (1994).

Paving contractor was entitled to a tax exemption for that part of the contractor's machinery and equipment located in the taxing county for use on state projects; use of the equipment solely on state projects was not required, nor was it required that proximity to state work be the sole reason for moving to the taxing county or that the majority of work be performed for the state. *APAC-Georgia, Inc. v. Richmond County Bd. of Tax Assessors*, 230 Ga. App. 570, 496 S.E.2d 488 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, § 51. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11, 13, 32, 344, 349. 71 Am. Jur. 2d, State and Local Taxation, § 278.

C.J.S. — 10 C.J.S., Bills and Notes, § 15. 81A C.J.S., States, §§ 364 et seq., 439, 446 et seq. 84 C.J.S., Taxation, § 304.

ALR. — Constitutional provision against impairing obligation of contract as applicable to statutes affecting rights or remedies of holders or owners of improvement bonds or liens, 97 ALR 911.

50-17-30. Liability of public officers and employees.

Any public officer or employee and any surety on his official bond or any other person participating in any direct or indirect impairment of any fund established in connection with public debt shall be liable in any action brought by the Attorney General in the name of the state, or by any taxpayer of the state, or by the holder of any evidence of indebtedness

payable in whole or in part, directly or indirectly, out of such fund to restore to such fund all diversions therefrom. (Ga. L. 1973, p. 750, § 9.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 346.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 259 et seq.

ARTICLE 3

STATE DEPOSITORIES

Cross references. — Administration of deposits of insurers, Ch. 12, T. 33. Depositing of state funds in state depositories, § 45-8-10 et seq.

50-17-50. Creation of State Depository Board; membership; quorum; board to name state depositories; assignment for administrative purposes.

The State Depository Board, referred to in this article as the “board,” is created, consisting of the Governor, the Commissioner of Insurance, the state accounting officer, the commissioner of banking and finance, the state revenue commissioner, the commissioner of transportation, and the director of the Office of Treasury and Fiscal Services, referred to in this article as the “director,” who shall act as administrative officer of the board. A majority of the board shall constitute a quorum, and the acts of the majority shall be the acts of the board. The board, in its discretion, may name and appoint, from time to time, as state depositories of state funds any bank or trust company which has its deposits insured by the Federal Deposit Insurance Corporation. The board may also name and appoint as state depositories of state funds any building and loan association or federal savings and loan association which has its deposits insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation or the Georgia Credit Union Deposit Corporation. The board may also authorize any department, board, bureau, or other agency of the state which has a foreign office to deposit state funds for current operating expenses in certain foreign banks, the deposits of which are not insured by the Federal Deposit Insurance Corporation, provided the balance of such deposits in any one foreign bank does not exceed limits prescribed by the State Depository Board. For the purposes of this article, “foreign bank” shall mean a bank organized under the laws of a foreign country. The board is assigned to the Department of Administrative Services for administrative purposes only as prescribed in Code Section 50-4-3. (Ga. L. 1878-79, p. 88, § 1; Code 1882, § 943a; Ga. L. 1888, p. 34, § 1; Ga. L. 1889, p. 54, § 1; Ga. L. 1890-91, p. 67, § 1; Ga. L. 1892, p. 54, § 1; Ga. L. 1893, p. 24, § 1; Ga. L. 1893, p. 25, § 1; Ga. L. 1893, p. 26, § 1; Ga. L. 1893, p. 27, § 1; Ga. L. 1893, p. 28, § 1; Ga. L. 1895, p. 21, § 1; Civil Code 1895, § 982; Ga. L. 1896, p. 39, § 1; Ga. L. 1897, p. 22, § 1; Ga. L. 1898, p. 46, § 1; Ga. L. 1899, p. 27,

§ 1; Ga. L. 1900, p. 43, § 1; Ga. L. 1901, p. 24, § 1; Ga. L. 1901, p. 25, § 1; Ga. L. 1901, p. 26, § 1; Ga. L. 1901, p. 27, § 1; Ga. L. 1901, p. 28, § 1; Ga. L. 1901, p. 29, § 1; Ga. L. 1902, p. 42, § 1; Ga. L. 1902, p. 43, § 1; Ga. L. 1902, p. 44, § 1; Ga. L. 1902, p. 45, § 1; Ga. L. 1902, p. 46, § 1; Ga. L. 1902, p. 47, § 1; Ga. L. 1902, p. 48, § 1; Ga. L. 1903, p. 28, § 1; Ga. L. 1903, p. 29, § 1; Ga. L. 1903, p. 30, § 1; Ga. L. 1903, p. 31, § 1; Ga. L. 1904, p. 56, § 1; Ga. L. 1904, p. 57, § 1; Ga. L. 1904, p. 58, § 1; Ga. L. 1905, p. 70, § 1; Ga. L. 1905, p. 71, § 1; Ga. L. 1905, p. 72, § 1; Ga. L. 1906, p. 34, § 1; Ga. L. 1906, p. 35, § 1; Ga. L. 1906, p. 36, § 1; Ga. L. 1906, p. 37, § 1; Ga. L. 1906, p. 38, § 1; Ga. L. 1906, p. 39, § 1; Ga. L. 1906, p. 40, § 1; Ga. L. 1906, p. 41, § 1; Ga. L. 1906, p. 42, § 1; Ga. L. 1907, p. 51, § 1; Ga. L. 1907, p. 52, § 1; Ga. L. 1907, p. 53, § 1; Ga. L. 1907, p. 54, § 1; Ga. L. 1908, p. 37, § 1; Ga. L. 1908, p. 38, § 1; Ga. L. 1908, p. 39, § 1; Ga. L. 1908, p. 40, § 1; Ga. L. 1909, p. 82, § 1; Ga. L. 1909, p. 83, § 1; Ga. L. 1909, p. 84, § 1; Ga. L. 1909, p. 85, § 1; Ga. L. 1909, p. 86, § 1; Civil Code 1910, § 1249; Ga. L. 1910, p. 50, § 1; Ga. L. 1910, p. 51, § 1; Ga. L. 1910, p. 52, § 1; Ga. L. 1910, p. 53, § 1; Ga. L. 1911, p. 57, § 1; Ga. L. 1911, p. 58, § 1; Ga. L. 1911, p. 59, § 1; Ga. L. 1911, p. 60, § 1; Ga. L. 1911, p. 61, § 1; Ga. L. 1911, p. 62, § 1; Ga. L. 1911, p. 63, § 1; Ga. L. 1911, p. 64, § 1; Ga. L. 1912, p. 47, § 1; Ga. L. 1912, p. 48, § 1; Ga. L. 1912, p. 49, § 1; Ga. L. 1912, p. 50, § 1; Ga. L. 1912, p. 51, § 1; Ga. L. 1913, p. 40, § 1; Ga. L. 1913, p. 41, § 1; Ga. L. 1914, p. 49, § 1; Ga. L. 1914, p. 50, § 1; Ga. L. 1914, p. 51, § 1; Ga. L. 1914, p. 52, § 1; Ga. L. 1914, p. 53, § 1; Ga. L. 1914, p. 54, § 1; Ga. L. 1914, p. 55, § 1; Ga. L. 1914, p. 56, § 1; Ga. L. 1915, p. 12, § 1; Ga. L. 1915, p. 13, § 1; Ga. L. 1915, p. 14, § 1; Ga. L. 1915, p. 15, § 1; Ga. L. 1916, p. 34, § 1; Ga. L. 1916, p. 35, § 1; Ga. L. 1916, p. 36, § 1; Ga. L. 1918, p. 111, § 1; Ga. L. 1919, p. 83, § 1; Ga. L. 1919, p. 84, § 1; Ga. L. 1920, p. 69, § 1; Ga. L. 1920, p. 70, § 1; Ga. L. 1920, p. 71, § 1; Ga. L. 1920, p. 72, § 1; Ga. L. 1920, p. 73, § 1; Ga. L. 1921, p. 98, § 1; Ga. L. 1921, p. 99, § 1; Ga. L. 1921, p. 100, § 1; Ga. L. 1922, p. 43, § 1; Ga. L. 1922, p. 44, § 1; Ga. L. 1922, p. 45, § 1; Ga. L. 1923, p. 54, § 1; Ga. L. 1923, p. 55, § 1; Ga. L. 1924, p. 49, § 1; Ga. L. 1925, p. 82, § 1; Ga. L. 1925, p. 83, § 1; Ga. L. 1925, p. 84, § 1; Ga. L. 1925, p. 85, § 1; Ga. L. 1925, p. 86, § 1; Ga. L. 1927, p. 140, § 1; Ga. L. 1927, p. 141, § 1; Ga. L. 1927, p. 142, § 1; Ga. L. 1929, p. 159, § 1; Ga. L. 1929, p. 161, § 1; Ga. L. 1929, p. 162, § 1; Ga. L. 1931, p. 119, § 1; Code 1933, § 100-101; Ga. L. 1949, p. 13, §§ 1, 2; Ga. L. 1960, p. 1144, § 1; Ga. L. 1969, p. 681, § 1; Ga. L. 1971, p. 553, § 1; Ga. L. 1972, p. 1015, § 413; Ga. L. 1973, p. 149, § 1; Ga. L. 1980, p. 763, § 1; Ga. L. 1986, p. 855, § 29; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 97, § 50; Ga. L. 1997, p. 863, § 1; Ga. L. 1997, p. 1525, § 1; Ga. L. 2005, p. 694, § 14/HB 293.)

Cross references. — Powers and duties of board with regard to local government investment pool, Ch. 83, T. 36.

Editor's notes. — Ga. L. 1960, p. 1144, § 7, not codified by the General Assembly, provides that all retirement, trust, and au-

thority funds shall be exempt from the provisions of the Act.

Ga. L. 1997, p. 1525, § 2, not codified by the General Assembly, provides: "No member of the State Depository Board shall vote to name and appoint as state depositories of

state funds any bank, trust company, building and loan association, federal savings and loan association, or the Georgia Credit

Union Deposit Corporation in which the member is a stockholder, board member, or owner."

JUDICIAL DECISIONS

Depositories created for purpose and specific use. — State depositories were created for the purpose and as a means whereby the tax collectors could remit money due the state, that is, as a method of payment of

money to the state. *Allen v. Henderson*, 48 Ga. App. 74, 172 S.E. 94 (1933).

Cited in *American Sur. Co. v. Griffin Banking Co.*, 50 Ga. App. 460, 178 S.E. 481 (1935).

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State Depository Board may appoint as state depository any building and loan association or savings and loan association, the

deposits of which are insured by the Federal Savings and Loan Insurance Corporation. 1975 Op. Att'y Gen. No. 75-37.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, §§ 7 et seq., 13.

C.J.S. — 26B C.J.S., Depositories, § 54 et seq. 81A C.J.S., States, §§ 441, 442.

50-17-50.1. Authority to vote.

No member of the State Depository Board shall vote to name and appoint as state depositories of state funds any bank, trust company, building and loan association, federal savings and loan association, or the Georgia Credit Union Deposit Corporation in which the member is a stockholder, board member, or owner. (Code 1981, § 50-17-50.1, enacted by Ga. L. 1998, p. 128, § 50.)

Editor's notes. — This Code section is a codification of the language of Ga. L. 1997, p. 1525, § 2.

50-17-51. Meetings of State Depository Board; records; list of deposits; interest policy; cash management policies and procedures.

(a) The board shall meet at least once every 90 days. The records and proceedings of the board shall be available for inspection by each member of the General Assembly. At the end of each quarter, the board shall furnish to the chairmen of the Senate and House Appropriations Committees, the chairman of the Senate Banking and Financial Institutions Committee, and the chairman of the House Banks and Banking Committee a list of all state time deposits, indicating the amount in each depository, the rates of interests contracted on such deposits, and the physical location of the depository.

(b) Compatible with the desirability of placing all state funds on deposit among state depositories and the necessity to maximize the protection of

state funds on deposit, the policy to be followed by the board shall be that there will accrue to the state an advantageous yield of interest on its funds in excess of those required for current operating expenses, in accordance with sound business management practices.

(c) The board shall prescribe cash management policies and procedures and state agencies shall employ the cash management policies and procedures prescribed by the board. Cash management policies and procedures prescribed by the board shall be designed to maximize the efficient and effective utilization of the state's cash resources for the state as a whole. The board may require state agencies to submit reports and plans on such forms and at such times as the board may prescribe to determine whether an agency is in compliance with the cash management policies and procedures prescribed by the board. The director shall serve as cash management officer for the state on behalf of the board. (Code 1933, § 100-101.1, enacted by Ga. L. 1971, p. 553, § 2; Ga. L. 1973, p. 149, § 2; Ga. L. 1976, p. 728, § 1; Ga. L. 1986, p. 10, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 1247, § 1.)

50-17-52. Contracts for interest on deposits; authority to remove deposits.

The board shall make with depositories the most advantageous contracts for interest to be paid by them to the state for the use of the state's money which may be deposited therein, as provided by this article. In so doing, the board may authorize the director to negotiate with depositories explicit fees in payment for the state's banking services. Such fees shall be paid by the director from interest earned and shall be subject to the board's approval. In the event any depository so named shall refuse to make a satisfactory contract with the board as to interest to be paid and fees to be charged, it shall have authority to remove state funds from such depository. (Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 984; Civil Code 1910, § 1251; Code 1933, § 100-103; Ga. L. 1949, p. 13, § 8; Ga. L. 1992, p. 1247, § 2.)

JUDICIAL DECISIONS

Recovery of principal and interest from receiver. — Where a bank has made a contract with the state, whereby the bank agrees to pay the state a certain rate of interest on daily balances on deposit in the bank, belonging to the state, and the bank subsequently becomes insolvent and a receiver is

appointed to take charge of the bank's assets, the state can recover of the receiver the principal sum due the state and interest at the contract rate to the date of the appointment of a receiver for the assets of the bank. *Central Bank & Trust Corp. v. State*, 139 Ga. 54, 76 S.E. 587 (1912).

OPINIONS OF THE ATTORNEY GENERAL

Limitations on purchases of negotiable certificates of deposit. — The terms "the most advantageous contracts for interest"

and "time deposit agreements" permit the state treasurer (now director of the Office of Treasury and Fiscal Services) to purchase

negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest

required by the State Depository Board. 1971 Op. Att'y Gen. No. 71-79.

50-17-53. Authority to determine amount to be deposited; deposit security required.

To enable the board to fulfill its responsibilities of ensuring safe and effective cash management, the board shall be authorized to determine, from time to time, in respect to all state funds, whether deposited by the director or any other department or agency of the state government, any and all of the following:

- (1) The maximum amount of state money which may be deposited in a particular depository;
- (2) The maximum and minimum proportion of state funds which may be maintained in a particular depository;
- (3) The amount of state funds to be deposited in particular state depositories as time deposits, and the periods of such deposits, provided that all state depositories shall give security for state deposits as required by law, but the board, in its discretion, may choose not to require that security be given in the case of special deposits and operating funds; and
- (4) The policies and procedures governing the collection, processing, deposit, and withdrawal of state funds. (Ga. L. 1949, p. 13, § 4; Ga. L. 1960, p. 1144, § 2; Ga. L. 1971, p. 553, § 4; Ga. L. 1973, p. 149, § 4; Ga. L. 1982, p. 3, § 50; Ga. L. 1992, p. 1247, § 3.)

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Constitutionality. — This law does not in any way pledge the credit of the state in violation of the prohibition contained in Ga. Const. 1976, Art. VII, Sec. III, Para. IV (now Ga. Const. 1983, Art. VII, Sec. IV, Para. VIII). 1948-49 Op. Att'y Gen. p. 435.

This section, which permits the State Depository Board to determine the maximum and minimum proportion of state funds which the treasurer (now director) can maintain in a particular depository, does not render this law unconstitutional. 1948-49 Op. Att'y Gen. p. 435.

Inconsistent laws are superseded or repealed. — To the extent that former Code 1933, § 89-812 (see O.C.G.A. §§ 34-8-81 and 45-8-13) or any other prior laws were irreconcilably inconsistent with former Code 1933, §§ 100-101 and 100-106 (see O.C.G.A. §§ 50-17-50 and 50-17-54), those laws were

superseded or repealed by implication. 1971 Op. Att'y Gen. No. 71-112.

Return of collateral. — When the State Depository Board acted to waive the bond requirement for a particular depository, it would be appropriate for the Department of Human Resources to return any collateral held as security for demand deposits in that depository; in other words, former Code 1933, §§ 100-104 and 100-106 (see O.C.G.A. §§ 50-17-54 and 50-17-58) did not require the return of collateral, but rather the action of the State Depository Board is required. 1971 Op. Att'y Gen. No. 71-112.

Board can change required amount. — This is a flexible provision, and the board can from time to time vary and change these amounts in the board's discretion. 1948-49 Op. Att'y Gen. p. 435.

Negotiable certificates that are time or call deposits. — Assuming that negotiable

certificates of deposit are either time deposits or call deposits, depending on the specific agreement, the State Depository Board, through the state treasurer (now director of the Office of Treasury and Fiscal Services), would be authorized to purchase negotiable certificates of deposit from state depositories, provided rules as to maximum amount and proration of deposits in particular depositories and all relevant statutes are observed; if negotiable certificates of deposit are neither time deposits nor call deposits, then purchase would be unauthorized. 1971 Op. Att'y Gen. No. 71-79.

Limitations on purchase of negotiable certificates of deposit. — The terms "the most advantageous contracts for interest" and "time deposit agreements" permit the state treasurer (now director of the Office of Treasury and Fiscal Services) to purchase negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest required by the State Depository Board. 1971 Op. Att'y Gen. No. 71-79.

State depositories must provide security in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, it is noted that the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Deposit of money gifts in state depositories. — Department of Public Safety may accept private foundation funds which are designated by the foundation for specified projects subject to the following limitations: the gift must be accepted in the name of and in behalf of the state; any conditional gift must not require the Department of Public Safety to exceed the department's powers; and all gifts of money must be held in accordance with the statutes relating to the deposit of money in state depositories. 1974 Op. Att'y Gen. No. 74-140.

50-17-54. Monitoring financial condition of depositories; action in case of insolvency of depository.

It shall be the duty of the board to keep itself advised, from time to time, of the financial condition of the various state depositories, as well as of the financial condition and standing of the securities on the bonds of the depositories; and, if at any time the board should become satisfied as to the insolvency of any of the depositories or that the affairs of any of the depositories are in an embarrassed financial condition, it shall be the duty of the board to direct the director to withdraw the money of the state from such depository. In case the board should be advised of the insolvency of the securities on the bond of any of the depositories, it shall be the duty of the director to notify the depository to strengthen the bond; and if, at the end of ten days, the bond is not strengthened, it shall be the duty of the board to direct the director to withdraw the money of the state from such depository. In either event, the board may also withdraw designation as a state depository. (Ga. L. 1882-83, p. 138, § 2; Civil Code 1895, § 987; Civil Code 1910, § 1254; Code 1933, § 100-106; Ga. L. 1949, p. 13, § 8; Ga. L. 1971, p. 553, § 5; Ga. L. 1973, p. 149, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, §§ 21, 23.

ALR. — Constitutionality, construction, and application of statute for prevention or

equalizing of loss to governmental or political units as result of insolvency or failure of depositories of public funds, 104 ALR 1372.

50-17-55. Absolute discretion of State Depository Board in performance of duties.

The board shall exercise absolute discretion in performing its duties under this article. (Ga. L. 1949, p. 13, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 7.

ALR. — Invalid designation by another than depositing officer of depository for public funds as affecting liability of officer or his bond for loss thereof through failure of depository, 66 ALR 1059.

Power of board or officials to depart from literal requirements in respect of deposits or loans of public funds in their control, 104 ALR 623.

50-17-56. Director to make deposits in compliance with board's determinations.

The director shall deposit all state moneys in compliance with the determination of the board as to the maximum amount and proportion of deposits in particular depositories. (Ga. L. 1949, p. 13, § 6; Ga. L. 1973, p. 149, § 11.)

RESEARCH REFERENCES

ALR. — Invalid designation by another than depositing officer of depository for public funds as affecting liability of officer or

his bond for loss thereof through failure of depository, 66 ALR 1059.

50-17-57. Director to make reports.

The director, as administrative officer of the board, shall furnish to the Governor and the board such information and reports relating to funds held on demand accounts and as investments, estimates of treasury receipts and withdrawals, and interest earned on investments as may be necessary or helpful to the board in the administration of its duties. (Ga. L. 1960, p. 1144, § 5; Ga. L. 1973, p. 149, § 13.)

50-17-58. Execution of bonds by depositories.

Depositories, before entering upon the discharge of their duties, by their proper officers, shall execute bonds, with good and sufficient securities, to be fixed and approved by the Governor. The bonds shall be conditioned for the faithful performance of all such duties as shall be required of them by

law and for a faithful accounting for the money or effects that may come into their hands during their continuance in office. The bonds shall be filed and recorded in the Governor's office and copies thereof, certified by one of the Governor's secretaries under the seal of the executive department, shall be received in evidence in lieu of the original in any of the courts; and the bonds shall have the same binding force and effect as public officers' bonds and, in case of default, shall be enforced in like manner. In determining the amount of the bond to be given by a depository under this Code section, the Governor shall fix the same as to make it not less than the amount of money to be entrusted to the depository; and in no case shall a larger amount of money be deposited in any depository than the amount of the bond; and the Governor, at any time, may require additional bond, if necessary, to cover fully the amount deposited or intended to be deposited in such bank. The board, in its discretion, may waive the requirement of such bond as to demand deposits in a depository. (Ga. L. 1878-79, p. 88, § 4; Code 1882, § 943d; Civil Code 1895, § 985; Ga. L. 1903, p. 32, § 1; Civil Code 1910, § 1252; Code 1933, § 100-104; Ga. L. 1971, p. 553, § 3; Ga. L. 1973, p. 149, § 3.)

Cross references. — Official bonds generally, Ch. 4, T. 45.

JUDICIAL DECISIONS

Effect of insolvency at date of bond. — While it is the duty of the Governor to use discretion in selecting a chartered solvent bank of good standing and credit as a state depository, the very object of requiring a bond is to guarantee the solvency of the bank, and one who becomes a surety on such bond cannot be discharged on the ground that the bank was insolvent. *Mathis v. Morgan*, 72 Ga. 517, 53 Am. R. 847 (1884).

Liability of surety. — One who became a surety on the bond of a bank as a state depository cannot free self from liability thereon on the ground that the Governor selected the bank as a solvent bank, and published the bank as one of the depositories, and that the surety was induced to become such by this fact, though the bank was not solvent at the time of the bank's selection, and the giving of the bond by the bank. *Mathis v. Morgan*, 72 Ga. 517, 53 Am. R. 847 (1884).

Surety liable despite Governor's representations. — Where one who signed the bond of a bank as a state depository resided in the city where the bank was located, and had opportunity to investigate as to the condi-

tion of the bank before signing the bond, but did sign and enabled the bank to receive money belonging to the state, that person could not relieve self from responsibility on the ground of false representations made by the Governor. *Mathis v. Morgan*, 72 Ga. 517, 53 Am. R. 847 (1884).

Liability for subsequent forgery. — It was the duty of the president of the bank to make the bond and furnish the sureties thereon, and having executed it as president, and signed it as surety individually, the president could not be relieved from liability because the name of one of the sureties which the president furnished, and which appeared on the bond after the president signed, was forged, and not signed by such surety. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

Purchasers charged with notice of suretyship. — Where purchasers of property from one who was the president of a bank knew of the president's position, the law charged the purchasers with notice that the bank was a state depository and was required to give bond and security; this was sufficient to put the purchasers on inquiry whether their

vendor was not personally one of the sureties which one had, as president, to procure, and the purchasers were not purchasers without notice of the state's lien. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

Purchasers subrogated to surety's defenses. — Purchasers of property from president of a bank, who were charged with notice that president was a surety, were subrogated to the president's position, and could make no defense which the president could not make. *Colquitt v. Simpson & Ledbetter*, 72 Ga. 501 (1884).

Governor's power regarding depository default. — Upon default of depository, Governor may issue execution at once, in like manner, as against a defaulting treasurer (now director of the Office of Treasury and Fiscal Services). *Seay v. Bank of Rome*, 66 Ga. 609 (1881).

State priority for assets of insolvent depository. — State has the right of priority of payment out of the assets of an insolvent state bank which prior to insolvency was a state depository as against individual depositors and creditors. *Seay v. Bank of Rome*, 66 Ga. 609 (1881); *Central Bank & Trust Corp. v. State*, 139 Ga. 54, 76 S.E. 587 (1912).

State school's deposited funds. — Funds arising partly from oil inspection fees, and partly from private donations, which had been turned over to and were in the hands of trustees of a school of agriculture, and were deposited by the treasurer of the board of trustees in the treasurer's own name, as such, in a bank which was a state depository, and which failed, did not constitute such a debt due to the state as created a lien in its favor under the law in reference to state depositories. *Knight v. State*, 137 Ga. 537, 73 S.E. 825 (1912).

Execution provides state with lien on all property of depository. — From the date of the execution of the bond of a state depository the state has a lien on its property for the amount thereof, and the lien of the state is not limited to such property of the depository as may be reached by levy and sale, but extends to all the property, including choses in action. *Seay v. Bank of Rome*, 66 Ga. 609 (1881); *Standard Accident Ins. Co. v. Luther Williams Bank & Trust Co.*, 45 Ga. App. 831, 166 S.E. 260 (1932), *rev'd on other grounds*, 178 Ga. 446, 173 S.E. 672 (1934).

Depository's bond is lien on property of principal and sureties from its date. *Fidelity*

& Deposit Co. v. Howard, 67 F.2d 961 (5th Cir. 1933), *aff'd sub nom. Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

State acquires lien on all assets. — The state acquires a lien on all of the assets of a depository bank, both those at the time of the execution of the bond and those subsequently acquired. *Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Lien does not apply to certain assets. — Lien arising under this section from giving of bond by national bank designated as depository for state funds does not apply to money paid out and stocks, bonds, and notes transferred from it in the course of business. *Fidelity & Deposit Co. v. Howard*, 67 F.2d 961 (5th Cir. 1933), *aff'd sub nom. Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Lien effective in case of insolvency and receivership. — Lien arising under this section from giving of bond by national bank designated as depository of state funds is effective in case of insolvency, notwithstanding, 12 U.S.C. § 91, prohibiting preferences made in view of insolvency, and 12 U.S.C. § 194, requiring the payment of ratable dividends to creditors, since these statutes do not affect liens validly existing against the bank's property before receivership. *Fidelity & Deposit Co. v. Howard*, 67 F.2d 961 (5th Cir. 1933), *aff'd sub nom. Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

National bank lien does not contravene federal law. — Creation of lien by national bank designated as depository of state funds by giving of bond under this section is not in contravention of federal law. *Fidelity & Deposit Co. v. Howard*, 67 F.2d 961 (5th Cir. 1933), *aff'd sub nom. Lewis v. Fidelity & Deposit Co.*, 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Subjection of national bank to state law. — While a national bank is subject to state law unless that law interferes with the purposes of its creation, or destroys its efficiency, or is in conflict with some paramount federal law, it is quite possible that the legislature might attempt to impose, under the conditions of the bond, a duty which the bank would be without authority to undertake; and to that extent the contract would be unenforceable.

Lewis v. Fidelity & Deposit Co., 292 U.S. 559, 54 S. Ct. 848, 78 L. Ed. 1425 (1934).

Cited in Gormley v. Board of Comm'rs of

Rds. & Revenues, 178 Ga. 439, 173 S.E. 667 (1934).

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Return of collateral when bond requirement waived. — When the State Depository Board acted to waive the bond requirement for a particular depository, it would be appropriate for the Department of Human Resources to return any collateral held as security for demand deposits in that depository; in other words, former Code 1933, §§ 100-104 and 100-106 (see O.C.G.A. §§ 50-17-53 and 50-17-58) did not require the return of collateral, but rather the action of the State Depository Board is required. 1971 Op. Att'y Gen. No. 71-112.

Procedures applicable when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the Treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services), whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the

bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

State depositories must provide security in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, it is noted that the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Inconsistent laws superseded or repealed. — To the extent that former Code 1933, § 89-812 (see O.C.G.A. §§ 34-8-81 and 45-8-13) or any other prior laws were irreconcilably inconsistent with Ga. L. 1971, p. 553, §§ 3 and 4 (see O.C.G.A. §§ 50-17-53 and 50-17-58), those laws were superseded or repealed by implication. 1971 Op. Att'y Gen. No. 71-112.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 15 et seq.

C.J.S. — 26B C.J.S., Depositaries, § 71.

ALR. — Validity and construction of provisions of depository's statutory bond in conflict with, or in addition to, condition prescribed by the statute, 88 ALR 547.

Validity, construction, and effect of cancellation provision in public depository's bond, 88 ALR 645.

Depository's bond as covering deposits made before its execution, 98 ALR 1312.

50-17-59. Deposit of securities in lieu of bond.

(a) The director cannot have on deposit at any one time in any of the depositories for a time longer than ten days a sum of money belonging to the state under a contract with the depository providing for the payment of interest by a depository which has not given a bond to the state in the amount as determined by the board. The bond to be given by the state depositories, when such bonds are required and whether the depositories are state or national banks, shall be a surety bond in a sum as required signed by a surety company duly qualified and authorized to transact

business within this state. In lieu of such a surety bond the state depository may deposit with the director to secure state funds on deposit in state depositories:

(1) Bonds, bills, certificates of indebtedness, notes, or other direct obligations of the United States or of this state;

(2) Bonds, bills, certificates of indebtedness, notes, or other obligations of the counties or municipalities of this state;

(3) Bonds of any public authority created by the laws of this state, if the statute creating such authority provides that the bonds of the authority may be used for this purpose and the bonds have been duly validated as provided by law, and as to which there has been no default in payment, either of principal or interest;

(4) Industrial revenue bonds or bonds of development authorities created by the laws of this state, which bonds have been duly validated as provided by law and as to which there has been no default in payment, either of principal or interest; or

(5) Bonds, bills, certificates of indebtedness, notes, or other obligations of a subsidiary corporation of the United States government, which are fully guaranteed by the United States government both as to principal and interest, or debt obligations issued by or securities guaranteed by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, the Central Bank for Cooperatives, the Farm Credit Banks, the Federal Home Loan Mortgage Corporation, or the Federal National Mortgage Association.

(b) The director may accept letters of credit issued by a Federal Home Loan Bank to secure state funds on deposit in state depositories.

(c) The director shall also accept the guarantee or insurance of accounts of the Federal Deposit Insurance Corporation to secure state funds on deposit in state depositories, to the extent authorized by federal law governing the Federal Deposit Insurance Corporation.

(d) Upon approval by the director, a state depository may secure deposits made with it in part by surety bond, in part by deposit of any or all of the bonds mentioned in subsection (a) of this Code section, whether these bonds are owned by the depository or by another bank, and in part by letters of credit pursuant to subsection (b) of this Code section, or by any such method. The board may determine, however, that such security will be required only in the case of time deposits under a contract providing for the payment of interest.

(e) The director is authorized to contract with any bank, other than the state depository offering the security, for the purpose of safekeeping the securities deposited with the director under this provision. (Ga. L. 1893, p.

135, § 1; Civil Code 1895, § 989; Civil Code 1910, § 1256; Ga. L. 1931, p. 120, § 1; Code 1933, § 100-108; Ga. L. 1935, p. 106, § 1; Ga. L. 1953, Nov.-Dec. Sess., p. 483, § 1; Ga. L. 1968, p. 485, § 1; Ga. L. 1970, p. 467, § 1; Ga. L. 1971, p. 553, § 6; Ga. L. 1973, p. 149, § 6; Ga. L. 1975, p. 917, § 1; Ga. L. 1976, p. 769, § 1; Ga. L. 1979, p. 399, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1993, p. 929, § 4; Ga. L. 1994, p. 499, § 2; Ga. L. 2007, p. 162, § 1/HB 96.)

The 2007 amendment, effective July 1, 2007, added subsection (b); redesignated former subsections (b) through (d) as present subsections (c) through (e), respectively; and, in subsection (d), in the first sentence, substituted "Upon approval by the director, a" for "A" at the beginning, substituted "bond," for "bond and" near the

beginning, inserted "and in part by letters of credit pursuant to subsection (b) of this Code section," in the middle, and substituted "any such method" for "either method" at the end.

Law reviews. — For article, "Tax-exempt Financing of Private Business: Structural Approaches," see 16 Ga. St. B.J. 8 (1979).

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Procedure when deposit exceeds bond amount. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services) whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

Pledges of notes also accepted in lieu of surety bonds. — This section, authorizing state depositories to deposit with the treasurer (now director of the Office of Treasury and Fiscal Services) "notes or other obligations of the United States or of this state," in lieu of surety bonds, is to be construed to include pledges of notes guaranteed and reinsured according to the provisions of the 1970 amendment to that section (Ga. L. 1970, p. 467). 1971 Op. Att'y Gen. No. 71-69.

State depositories may pledge or assign to the treasurer (now director of the Office of

Treasury and Fiscal Services) in lieu of surety bonds, notes fully guaranteed by the Georgia Higher Education Assistance Corporation to the extent that they are reinsured by the United States government in accordance with the 1970 amendment to this section by Ga. L. 1970, p. 467. 1971 Op. Att'y Gen. No. 71-69.

State depositories must provide security in the form of a bond or a bond and certain enumerated securities in a sum equal to the amount of money to be deposited with such depository; however, the guarantee of the Federal Deposit Insurance Corporation shall be accepted as collateral to the extent authorized by federal law. 1968 Op. Att'y Gen. No. 68-61.

Obligations of government corporations. — Guarantee as to principal and interest accepted as security since there exist government corporations whose obligations are specifically guaranteed as to principal and interest, the statutory rule of construction that words are to be given their ordinary signification would require the conclusion that it was to the obligations of these corporations that the General Assembly was referring to in this section. 1975 Op. Att'y Gen. No. 75-6.

Warrants may be used as security. — This section specifically provides that Western & Atlantic Railroad warrants may be used to secure bank deposits. 1979 Op. Att'y Gen. No. 79-12.

Tax anticipation notes are not acceptable as collateral. — Tax anticipation notes used to cover temporary loans for expenses to Georgia's cities and counties during the current year would not be proper collateral for state deposits since tax anticipation notes are not included in this section as proper collateral. 1968 Op. Att'y Gen. No. 68-3.

Assets of bank other than depository bank

are not acceptable. 1979 Op. Att'y Gen. No. 79-12.

Standby letters of credit issued by a Federal Home Loan Bank. — Standby letters of credit issued by a Federal Home Loan Bank do not meet the statutory criteria for collateral for deposits of public funds. 1999 Op. Att'y Gen. No. 99-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 30.

ALR. — Liability upon public depository bond as affected by excess of deposit over legal limit, 90 ALR 679.

Depository's bond as covering deposits made before its execution, 98 ALR 1312.

50-17-60. Governor to sell bonds to reimburse state for any default.

Whenever any bank which has been made a state depository and has deposited bonds shall fail to perform faithfully such duties as shall be required of it by law or shall fail to account faithfully for all the public moneys or effects that may have come into its hands during its continuance in office, the Governor shall sell sufficient bonds to reimburse the state the amounts due by the state depository on account of such default. (Ga. L. 1889, p. 177, § 2; Civil Code 1895, § 991; Civil Code 1910, § 1258; Code 1933, § 100-110.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 26.

ALR. — Depository's bond as covering

deposits made before its execution, 98 ALR 1312.

50-17-61. Procedure for relief of bond sureties.

Any surety desiring to be relieved from the bond of a state depository may give notice in writing to the Governor of such desire with the reasons therefor; and the Governor shall have authority, in his discretion, to relieve the surety. The consent of the cosureties first must be obtained in writing; and the principal must furnish a new surety to take the place of the surety relieved, which new surety will assume all the liabilities for past and future transactions. (Ga. L. 1882-83, p. 138, § 3; Civil Code 1895, § 988; Civil Code 1910, § 1255; Code 1933, § 100-107.)

RESEARCH REFERENCES

C.J.S. — 26B C.J.S., Depositories, §§ 62 et seq., 85. deposits made before its execution, 98 ALR 1312.

ALR. — Depository's bond as covering

50-17-62. Funds to be held by depositories.

State depositories shall hold:

(1) All funds deposited with them as time deposits for and on account of the state in accordance with such time deposit agreements as from time to time may be entered into between the depositories and the board pursuant to Code Section 50-17-52, which agreements shall not be inconsistent with the statutes of the United States and regulations made pursuant thereto governing interest-bearing time deposits; and

(2) All other funds received by them for and on account of the state, subject to the check or order of the director of the Office of Treasury and Fiscal Services or the officer or employee charged with the custody of any particular bank account. (Ga. L. 1878-79, p. 88, § 5; Code 1882, § 943e; Civil Code 1895, § 992; Civil Code 1910, § 1259; Code 1933, § 100-111; Ga. L. 1960, p. 1144, § 3; Ga. L. 1993, p. 1402, § 18.)

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Procedure when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services), whenever a deposit through accumulation of interest or otherwise grew be-

yond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

State depositories must hold all funds either as time deposits or call deposits. 1971 Op. Att'y Gen. No. 71-79.

50-17-63. Deposit of demand funds; investment of funds; reports; remittance of interest earned; motor fuel tax revenues.

(a) All demand funds held by any department, board, bureau, or other agency of the state shall be deposited in state depositories, except the monthly deposits of funds for current operating expenses may be deposited in a foreign bank by any department, board, bureau, or other agency of the state which has a foreign office, provided that the department, board, bureau, or other agency of the state limits its operating deposits in foreign banks to conform to guidelines and dollar limitations prescribed by the State Depository Board; and such funds that are in excess of requirements

for current operating expenses shall be placed under time deposit agreements by the director conforming to interest contracts then having approval of the board made pursuant to Code Section 50-17-52; and any funds not deposited or placed under time deposit agreements shall be subject to immediate withdrawal on order of the director when directed by the board. The board may permit any department, board, bureau, or other agency to invest funds collected directly by that department, board, bureau, or agency in short-term time deposit agreements, provided the interest income of those funds is remitted to the director as revenues of the state.

(b) All departments, boards, bureaus, and other agencies of the state shall report to the board, on such forms and at such times as the board may prescribe, such information as the board may reasonably require concerning deposits and withdrawals pursuant to this Code section and shall enable the board to determine compliance with this Code section. Interest earned on state funds withdrawn from the state treasury on approved budgets shall be remitted to the Office of Treasury and Fiscal Services by each department, board, bureau, or agency and placed in the general fund. The board may permit the director to invest in any one or more of the following: bankers' acceptances; commercial paper; bonds, bills, certificates of indebtedness, notes, or other obligations of the United States and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including, but not limited to, obligations or securities issued or guaranteed by Banks for Cooperatives regulated by the Farm Credit Administration, the Commodity Credit Corporation, Farm Credit Banks regulated by the Farm Credit Administration, Federal Assets Financing Trusts, the Federal Financing Bank, Federal Home Loan Banks, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Financial Assistance Corporation chartered by the Farm Credit Administration, the Government National Mortgage Association, the Import-Export Bank, Production Credit Associations regulated by the Farm Credit Administration, the Resolution Trust Corporation, and the Tennessee Valley Authority; obligations of corporations organized under the laws of this state or any other state but only if the corporation has a market capitalization equivalent to \$100 million; provided, however, that such obligation shall be listed as investment grade by a nationally recognized rating agency; bonds, notes, warrants, and other securities not in default which are the direct obligations of the government of any foreign country which the International Monetary Fund lists as an industrialized country and for which the full faith and credit of such government has been pledged for the payment of principal and interest, provided that such securities are listed as investment grade by a nationally recognized rating agency; or obligations issued, assumed, or guaranteed by the International Bank for Reconstruction and Development or the International Financial Corporation, provided that such securities are listed as investment grade by a nationally recognized rating agency; provided, however, that interest

earned on the investment of motor fuel tax revenues shall be defined as motor fuel tax revenues and shall be appropriated in conformity with and pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of Georgia. The board may also permit the director to lend any of the securities of the type identified in this subsection subject to the limitations of subsection (b) of Code Section 50-5A-7 and Chapter 17 of this title. (Ga. L. 1960, p. 1144, § 4; Ga. L. 1973, p. 149, § 12; Ga. L. 1979, p. 399, § 2; Ga. L. 1983, p. 3, § 66; Ga. L. 1993, p. 1402, § 17; Ga. L. 1997, p. 569, § 3; Ga. L. 1997, p. 863, § 2; Ga. L. 2000, p. 1474, § 11; Ga. L. 2004, p. 319, § 3; Ga. L. 2004, p. 335, § 1.)

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Georgia St. U.L. Rev. 306 (1997).

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Procedure when deposit exceeds bond. — Former Code 1933, § 100-108 (see O.C.G.A. § 50-17-59) did not in any way authorize the treasurer (now director of the Office of Treasury and Fiscal Services) to make a deposit in excess of the bond or other authorized security for a ten-day period; it instead provided for a grace period of ten days within which the treasurer (now director of the Office of Treasury and Fiscal Services) whenever a deposit through accumulation of interest or otherwise grew beyond the amount of the bond, must either withdraw the excess or obtain additional bond (or authorized security) from the depository; this applied to all state funds, including former Code 1933, §§ 100-104 and 100-111 and Ga. L. 1960, p. 1144, § 4 (see O.C.G.A. §§ 50-17-58, 50-17-62, and 50-17-63). 1971 Op. Att'y Gen. No. 71-65.

Appropriation of interest on motor fuel tax revenues. — Interest earned on motor fuel tax revenues is constitutionally appropriated for activities incident to the construction and maintenance of roads and bridges. 1984 Op. Att'y Gen. No. 84-6.

Audit billeting funds or armory rentals of DOD. — Funds collected by the Department of Defense (DOD) as billeting funds or armory rentals pursuant to regulations issued under O.C.G.A. § 38-2-195 are state funds which may be retained by DOD. The management of the funds is subject to requirements of the Office of Planning and Budget, the State Auditor, and the State Depository Board. 1993 Op. Att'y Gen. No. 93-4.

50-17-64. Depositories required to furnish monthly statements.

State depositories shall furnish to the state official having custody of the funds a monthly statement of demand accounts and shall furnish to the responsible official or to the board such other statements as may be requested relating to funds or transactions in custody of or caused by the agencies, bureaus, boards, commissions, or departments of this state. (Ga. L. 1878-79, p. 88, § 5; Code 1882, § 943e; Ga. L. 1893, p. 135, § 2; Civil Code 1895, §§ 990, 992; Civil Code 1910, §§ 1257, 1259; Code 1933, § 100-109; Ga. L. 1973, p. 149, § 7.)

50-17-65. State officials to notify depositories of any unauthorized signatures or alterations; notification in lieu of other obligations to notify; assent to provisions by depositories.

The state official or employee of any state department, board, bureau, commission, committee, authority, or other state agency to whom a depository bank sends the statement of account, paid items, and related material shall notify such depository bank of the existence of any unauthorized signature or alteration appearing on any such paid item or related material. The notification shall be in writing and shall be delivered to the depository bank as soon as the unauthorized signature or alteration is discovered, but in no event no later than 90 days from the closing date of the annual state audit for the fiscal year during which the unauthorized signature was affixed or during which the alteration occurred. The notification shall be in lieu of any other obligation to discover and report unauthorized signatures or alterations provided by contract or by law, including, but not limited to, Code Section 11-4-406. The receipt of state funds or funds of any department, authority, board, bureau, commission, committee, or other agency of the state by a depository bank shall constitute assent to the provisions of this Code section. (Code 1933, § 100-115, enacted by Ga. L. 1971, p. 553, § 7.)

50-17-66. State officer not to receive commission, interest, compensation, or reward for depositing state money.

No officer of this state shall be allowed to receive any commission, interest, compensation, or reward for himself from any source for the depositing of the state's money in depositories or for continuing such deposits. Any officer of this state who receives any such commission, interest, compensation, or reward for himself shall, upon conviction thereof, be punished by imprisonment for not less than seven nor more than 20 years and shall be disqualified to hold office. (Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 984; Penal Code 1895, § 201; Civil Code 1910, § 1251; Penal Code 1910, § 199; Code 1933, §§ 100-103, 100-9901.)

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Limitations on purchase of negotiable certificates of deposit. — The terms “the most advantageous contracts for interest” and “time deposit agreements” permit the state treasurer (now director of the Office of Treasury and Fiscal Services) to purchase

negotiable certificates of deposit from state depositories provided the negotiable certificates of deposit are at the rates of interest required by the State Depository Board. 1971 Op. Att’y Gen. No. 71-79.

RESEARCH REFERENCES

Am. Jur. 2d. — 63A Am. Jur. 2d, Public Funds, § 12.

50-17-67. Depositories to serve without definite term or salary or fees; exception.

Depositories appointed by the board shall serve only at the discretion of the board and without definite term. Depositories shall receive no salary or fees from the state except as authorized by Code Section 50-17-52. (Ga. L. 1878-79, p. 88, § 2; Code 1882, § 943b; Ga. L. 1895, p. 22, § 1; Civil Code 1895, § 983; Civil Code 1910, § 1250; Code 1933, § 100-102; Ga. L. 1949, p. 13, § 3; Ga. L. 1992, p. 1247, § 4.)

ARTICLE 4

GOVERNMENTAL COMMERCIAL PAPER NOTES

Cross references. — Commercial paper notes from government, § 36-82-240.

50-17-90. Definitions.

As used in this article, the term:

(1) “Governing body” means, with respect to the state, the Georgia State Financing and Investment Commission, and with respect to a state authority, such authority’s board.

(2) “State authority” shall mean “state authority” as defined in paragraph (9) of Code Section 50-17-21. (Code 1981, § 50-17-90, enacted by Ga. L. 2004, p. 886, § 7.)

50-17-91. Governed by general provisions on commercial paper; issuance of security by governmental entity; requirements of governing body; renewal and reissuance of commercial paper.

(a) Whenever the state or any state authority is authorized by law to incur bonds, notes, or certificates, including but not limited to general obligation bonds, guaranteed revenue bonds, revenue bonds, bond anticipation notes, tax anticipation notes, or revenue anticipation certificates, the state or state authority is authorized to issue such obligation in the form of commercial paper notes. The issuance of commercial paper notes shall be subject to the same restrictions and provisions under the laws of this state which would be applicable to the issuance of the type of bond, note, or certificate in lieu of which the commercial paper notes are being issued. The state or state authority may designate the commercial paper notes issued under this article to be in registered form or bearer form and may provide for payment

by wire transfers or electronic funds transfer in accordance with the federal Electronic Fund Transfer Act, 15 U.S.C., Section 1693, et seq. The authority granted by this article to issue commercial paper notes shall not be construed to permit the state or state authority to increase or otherwise alter any debt limits.

(b) To secure commercial paper notes authorized under this article, the state or state authority may:

(1) Pledge its anticipated taxes, grants, or other revenue; the proceeds of any bonds, notes, or other permanent financing; or any combination thereof;

(2) Segregate any pledged funds in separate accounts that may be held by the state, state authority, or third parties;

(3) Enter into contracts with third parties to obtain standby lines of credit or other financial commitments designated to provide additional security for commercial paper notes authorized by this article;

(4) Establish any reserves deemed necessary for the payment of the commercial paper notes; and

(5) Adopt resolutions and enter into agreements containing covenants, including covenants to issue bonds, notes, or other permanent financing and provisions for protection and security of the owners of commercial paper notes, which shall constitute enforceable contracts with such owners.

(c) Commercial paper notes authorized by this article may be in any form and contain any terms, including provisions for redemption at the option of the owner and provisions for the varying of interest rates in accordance with any index, banker's loan rate, or other standard.

(d) The governing body shall adopt a resolution finding that issuance of the obligations in the form of commercial paper notes is necessary and desirable, directing the designated officer to arrange for preparation of the requisite number of suitable notes, and specifying other provisions relating to the commercial paper notes including the following:

(1) For each program of commercial paper notes authorized, the final date of maturity and the total aggregate principal amount of the commercial paper notes authorized to be outstanding at any one time up to the maturity date. The resolution may provide that the commercial paper notes may be issued and renewed from time to time until the final maturity date and that the amount issued from time to time may be set by a designated officer of the governmental entity up to the maximum amount authorized to be outstanding at any one time. The resolution shall include methods of setting the dates, numbers, and denominations of the commercial paper notes;

(2) The method of setting the interest rates and interest payment dates applicable to the commercial paper notes. Commercial paper notes may bear a stated rate of interest payable only at maturity, which rate or rates may be determined at the time of sale of each unit of commercial paper notes;

(3) The maximum effective rate of interest the commercial paper notes shall bear;

(4) The manner of sale;

(5) The discount, if any, the state or state authority may allow;

(6) Any provisions for the redemption of the commercial paper notes prior to the stated maturity;

(7) The technical form and language of the commercial paper notes; and

(8) All other terms and conditions of the commercial paper notes and of their execution, issuance, and sale deemed necessary and appropriate by the state or state authority.

(e) The governing body, in the resolution authorizing the issuance of commercial paper notes under this article, may delegate to any elected or appointed official of the state or state authority the authority to determine maturity dates, principal amounts, redemption provisions, interest rates, and other terms and conditions of such commercial paper notes that are not appropriately determined at the time of enactment or adoption of the authorizing resolution, which delegated authority shall be exercised subject to such parameters, limitations, and criteria as may be set forth in such resolution.

(f) Any commercial paper notes may be sold at negotiated sale at a price below the par value thereof.

(g) For purposes of determining the principal amount of debt outstanding in connection with complying with any limitations on the amount of debt outstanding for a governmental entity, commercial paper notes shall be deemed outstanding at any time during the term of a program of commercial paper notes in an amount equal to the maximum amount authorized in the resolution.

(h) The renewal and reissuance from time to time of the commercial paper notes pursuant to a commercial paper note program in an amount up to the maximum amount authorized by the resolution shall be deemed to be a refunding of the previously maturing amount. (Code 1981, § 50-17-91, enacted by Ga. L. 2004, p. 886, § 7.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, “or other revenue;” was substituted for “other reve-

nue,” and “financing;” was substituted for “financing;” in paragraph (b)(1).

ARTICLE 5

INTEREST RATE MANAGEMENT

Cross references. — Interest and usury, Ch. 4, T. 7. Interest rate management agreements, Art. 11, Ch. 82, T. 36.

50-17-100. Definitions.

As used in this article, the term:

(1) “Commission” means the Georgia State Financing and Investment Commission as defined in paragraph (1) of Code Section 50-17-21, as amended.

(2) “Counterparty” means the party entering into a qualified interest rate management agreement with the state party. A counterparty must be a bank, insurance company, or other financial institution duly qualified to do business in the state that either:

(A) Has, or whose obligations are guaranteed by an entity that has, at the time of entering into a qualified interest rate management agreement and for the entire term thereof, a long-term unsecured debt rating or financial strength rating in one of the top two ratings categories, without regard to any refinement or gradation of rating category by numerical modifier or otherwise, assigned by any two of the following: Moody’s Investors Service, Inc., Standard & Poors Ratings Service, a division of The McGraw-Hill Companies, Inc., Fitch, Inc., or such other nationally recognized ratings service approved by the commission; or

(B) Has collateralized its obligations under a qualified interest rate management agreement in a manner approved by the commission.

(3) “Debt” shall include all debt and revenue obligations that a state party is authorized to incur by law, including without limitation general obligation debt in the form of bonds or other obligations, guaranteed revenue debt in the form of bonds or other obligations, revenue bonds and other forms of revenue obligations, and all other debt or revenue undertakings, including, but not limited to, bonds, notes, warrants, certificates or other evidences of indebtedness, or other obligations for borrowed money issued or to be issued by any state party. “Debt” includes any financing lease or installment purchase contracts of any state authority.

(4) “Independent financial adviser” means a person or entity experienced in the financial aspects and risks of qualified interest rate

management agreements that is retained by the state party to render advice with respect to a qualified interest rate management agreement. The independent financial adviser may not be the counterparty or an affiliate or agent of the counterparty on a qualified interest rate management agreement with respect to which the independent financial adviser is advising the state party.

(5) "Interest rate management plan" means a written plan prepared or reviewed by an independent financial adviser with respect to qualified interest rate management agreements of the state party.

(6) "Lease or installment purchase contract" means multiyear lease, purchase, installment purchase, or lease purchase contracts within the meaning of Code Sections 50-5-64, 50-5-65, and 50-5-77 or substantially similar other or successor Code sections.

(7) "Qualified interest rate management agreement" means an agreement, including a confirmation evidencing a transaction effected under a master agreement, entered into by the state party in accordance with, and fulfilling the requirements of, Code Section 50-17-101 which agreement in the judgment of the state party is designed to manage interest rate risk or interest cost of the state party on any debt or lease or installment purchase contract the state party is authorized to incur, including, but not limited to, interest rate swaps or exchange agreements, interest rate caps, collars, corridors, ceiling, floor, and lock agreements, forward agreements, swaptions, warrants, and other interest rate agreements which, in the judgment of the state party, will assist the state party in managing the interest rate risk or interest cost of the state or state authority.

(8) "State authority" means any state authority as defined in paragraph (9) of Code Section 50-17-21, as amended.

(9) "State party" means the state and any state authority. (Code 1981, § 50-17-100, enacted by Ga. L. 2005, p. 642, § 2/SB 227; Ga. L. 2006, p. 72, § 50/SB 465.)

Cross references. — Interest rate management agreements, Art. 11, Ch. 82, T. 36.

50-17-101. Guidelines, rules, and regulations for interest rate management plans and programs; state parties authorized to enter into, modify, or terminate interest rate management plans; disposition of payments under agreements; obligations, terms, and conditions; agency for state and oversight of the commission.

(a) The commission is authorized to and shall establish guidelines, rules, or regulations with respect to the procedures for approving interest rate management plans and with respect to any requirements for qualified

interest rate management agreements. Such guidelines, rules, and regulations shall apply to the interest rate management plans and qualified interest rate management agreements of any state party. Such guidelines, rules, and regulations shall not constitute a rule within the meaning of Chapter 13 of this title, the "Georgia Administrative Procedure Act," including, without limitation, the term "rule" as defined in paragraph (6) of Code Section 50-13-2 and used in Code Section 50-13-4.

(b) With respect to all or any portion of any debt or any lease or installment purchase contract, either issued or anticipated to be issued by the state party, the state party may enter into, terminate, amend, or otherwise modify a qualified interest rate management agreement under such terms and conditions as the state party may determine, including, without limitation, provisions permitting the state party to pay to or receive from any counterparty any loss of benefits under such agreement upon early termination thereof or default under such agreement.

(c) Payments received by a state party pursuant to the terms of a qualified interest rate management agreement shall not be deposited into the state general fund but shall be subject to disposition by the state party and applied in accord with the goals of managing interest rate risk and interest cost as set forth in the qualified interest rate management agreement, any authorizing document for the debt or the lease or installment purchase contract to which such qualified interest rate management agreement relates, or such state party's interest rate management plan.

(d)(1) With respect to any qualified interest rate management agreement related to all or any portion of debt of a state party, the obligations of the state party contained in such qualified interest rate management agreement may be incurred as related or additional obligations of such debt and approved in the same manner as required for authorizing, approving, and issuing such debt to the extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related debt. If this power is exercised with respect to state debt, the obligations to pay a counterparty shall be subordinate to the obligations to pay holders of general obligation debt, guaranteed revenue debt, and all payments required under contracts entitled to the protection of the second paragraph of Paragraph I(a), Section VI, Article IX of the Constitution of 1976.

(2) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection and the qualified interest rate management agreement relates to debt of a state authority, the qualified interest rate management agreement shall be on such terms and conditions as the state party and counterparty agree consistent with provisions of this article.

(3) When the obligations of the state party are not incurred as related or additional obligations pursuant to paragraph (1) of this subsection

and the qualified interest rate management agreement relates to debt of the state or to a lease or installment purchase contract, the obligations of the state party contained in such qualified interest rate management agreement may renew from fiscal year to fiscal year and may provide for the payment of any fee related to a termination or a nonrenewal, so long as the following requirements are satisfied:

(A) Such qualified interest rate management agreement shall terminate absolutely at the close of the fiscal year in which it was executed and at the close of each succeeding fiscal year for which it may be renewed;

(B) Any renewal of such qualified interest rate management agreement shall require positive action taken by the state party or in such other manner not otherwise prohibited by law which method of renewal and termination, in either case, shall be specified in the qualified interest rate management agreement; and

(C) Such qualified interest rate management agreement shall include a statement of the total obligation of the state party for the fiscal year of execution and, if renewed, for the fiscal year of renewal.

A qualified interest rate management agreement meeting the requirements of this paragraph may also provide that the state's obligations will terminate immediately and absolutely at such time as appropriated and other funds encumbered for payment by the state pursuant to the terms of such qualified interest rate management agreement are no longer available to satisfy such obligations. The total obligation of the state for the fiscal year payable pursuant to a qualified interest rate management agreement may be stated in contingent but objective terms with respect to variable rate payments or termination payments, but in that event a qualified interest rate management agreement must provide that it will terminate immediately and absolutely at such time as appropriated and other funds encumbered for its payment are no longer available to satisfy the obligations of the state under such agreement. A qualified interest rate management agreement executed under this paragraph shall not be deemed to create a debt of the state or otherwise obligate the payment of any sum beyond the fiscal year of execution or, in the event of a renewal, beyond the fiscal year of such renewal. When a qualified interest rate management agreement is executed under this paragraph or paragraph (1) of this subsection, the obligation of the state may be treated as an operating expense of the commission within the meaning of Paragraph VII of Section IV of Article VII of the Constitution and within the meaning of paragraph (2) of subsection (g) of Code Section 50-17-22 and of subsection (b) of Code Section 50-17-27.

(e)(1) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to debt may

be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation, as to the state, proceeds of general obligation debt, earnings on investments of proceeds of general obligation debt, appropriations of state and federal funds, and agency funds; and, as to any state authority, any funds of such state authority to the extent not otherwise prohibited, limited, or impractical and consistent with any tax exempt status of the related debt.

(2) The obligations of a state party to pay a counterparty under a qualified interest rate management agreement with respect to a lease or installment purchase contract may be paid from any lawful source, to the extent not otherwise prohibited, limited, or impractical and consistent with any tax-exempt status of the related lease or installment purchase agreement and in compliance with Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," including without limitation appropriations of state and federal funds and agency funds.

(f)(1) With respect to obligations of a state authority to pay a counterparty, any qualified interest rate management agreement of a state authority may provide that it is an unconditional, limited recourse obligation of such state authority payable from a specified revenue source.

(2) A state authority may, in any qualified interest rate management agreement that constitutes a limited recourse obligation of the state authority, pledge to the punctual payment of amounts due under the qualified interest rate management agreement revenues from a specified revenue source, which shall not include any taxes, including without limitation collateral derived from such revenue source or proceeds of the debt, including debt for future delivery, to which such qualified interest rate management agreement relates.

(3) A qualified interest rate management agreement that constitutes a limited recourse obligation shall not be payable from or charged upon any funds other than the revenue identified as the source of payment thereof, nor shall the state authority entering into the same be subject to any pecuniary liability thereon. No counterparty under any such qualified interest rate management agreement shall ever have the right to compel any exercise of the taxing power of the state or the state authority to pay any amount due under any such qualified interest rate management agreement, nor to enforce payment thereof against any property of the state or state authority, other than the specified revenue source; nor shall any such qualified interest rate management agreement constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state or state authority, other than the specified revenue source. Every such qualified interest rate management agreement shall contain a recital setting forth the substance of this paragraph.

(g)(1) The commission shall act for the state with respect to debt of the state and a qualified interest rate management agreement. However, upon authorization of the Governor, the Office of Treasury and Fiscal Services shall act as fiscal agent or provide other administrative services.

(2) A state authority shall act for itself with respect to an interest rate management plan, a qualified interest rate management agreement, and an independent financial adviser regarding the debt of the state authority subject, however, to the guidelines, rules, and regulations of the commission under subsection (a) of this Code section. Further, the interest rate management plan, a qualified interest rate management agreement, and retention of an independent financial adviser will be treated as financial advisory matters within the exclusive authority and jurisdiction of the commission under paragraph (1) of subsection (f) of Code Section 50-17-22 and will require specific commission approval, unless the commission otherwise directs in either the specific case or in general terms. Upon authorization of the Governor, the Office of Treasury and Fiscal Services shall act as fiscal agent or provide other administrative services for a qualified interest rate management agreement of the state authority.

(3) The agency responsible for payment shall act for the state with respect to a lease or installment purchase contract but only under the supervision and approval of the commission. Upon authorization of the Governor, the Office of Treasury and Fiscal Services shall act as fiscal agent or provide other administrative services. (Code 1981, § 50-17-101, enacted by Ga. L. 2005, p. 642, § 2/SB 227; Ga. L. 2006, p. 72, § 50/SB 465.)

Code Commission notes. — Pursuant to deleted preceding “Part 1” in paragraphs Code Section 28-9-5, in 2006, “the” was (e)(1) and (e)(2).

50-17-102. Interest rate management plans.

(a) Prior to executing and delivering a qualified interest rate management agreement, the state party shall have adopted an interest rate management plan that includes:

(1) An analysis of the interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks to the state party entering into qualified interest rate management agreements;

(2) The state party’s procedure for approving and executing qualified interest rate management agreements;

(3) The state party’s plan to monitor interest rate risk, basis risk, termination risk, credit risk, market-access risk, and other risks; and

(4) Such other provisions as may from time to time be required by the commission, including but not limited to additional provisions due to

changes in market conditions for qualified interest rate management agreements.

Any interest rate management plan adopted by the state shall be approved by the commission or by a designated officer of the commission and shall have been reviewed by an independent financial adviser approved by the commission.

(b) The state party shall conduct an annual review of its interest rate management plan as to the adequacy of the procedures set forth in such plan for the analysis and monitoring requirements set forth in subsection (a) of this Code section. A report summarizing the results of such review shall be submitted annually to the commission and, with respect to any interest rate management plan of a state authority, to the governing body of such state authority. The requirements of this subsection shall not be construed as to require the review of any existing interest rate management plan by an independent financial adviser. (Code 1981, § 50-17-102, enacted by Ga. L. 2005, p. 642, § 2/SB 227.)

50-17-103. Requirements for interest rate management agreements; credit enhancement or liquidity agreements.

(a) Each qualified interest rate management agreement shall meet the following requirements:

(1) The maximum term, including any renewal periods, of any qualified interest rate management agreement of the state may not exceed ten years unless such longer term has been approved by the commission. In addition to approval of the commission required by paragraph (2) of subsection (g) of Code Section 50-17-101, the maximum term, including any renewal periods, of any qualified interest rate management agreement of a state authority may not exceed ten years unless such longer term has been approved by the governing body of the state authority. The foregoing provisions of this paragraph notwithstanding, in no case may the term of the qualified interest rate management agreement exceed the latest maturity date of the bonds, notes, debt, or lease or installment purchase contract referenced in the qualified interest rate management agreement.

(2) The state party shall enter into a qualified interest rate management agreement only with a counterparty meeting the requirements set forth in paragraph (2) of Code Section 50-17-100.

(3) Prior to the execution and delivery by the state of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 50-17-102 must have been submitted to the commission and the commission shall have been provided evidence that such qualified interest rate management agree-

ment is in compliance with the existing interest rate management plan. Prior to the execution and delivery by a state authority of any qualified interest rate management agreement, an interest rate management plan meeting the requirements of Code Section 50-17-102 must have been submitted to the governing body of the state authority and the governing body of the state authority shall have been provided evidence that such qualified interest rate management agreement is in compliance with the existing interest rate management plan.

(4) Any qualified interest rate management agreement shall be payable only in the currency of the United States of America.

(5) The notional amount of any qualified interest rate management agreement shall not exceed the outstanding principal amount of the debt or the aggregate payments due under any lease or installment purchase contract to which such agreement relates unless otherwise approved in writing by the commission for any qualified interest rate management agreement executed by the state or by the governing body of the state authority for any qualified interest rate management agreement executed by a state authority, subject to the approval of the commission required by paragraph (2) of subsection (g) of Code Section 50-17-101.

(b) Any state party may enter into credit enhancement or liquidity agreements in connection with any qualified interest rate management agreement containing such terms and conditions as the state party determines are necessary or desirable, provided that any such agreement has the same source of payment as the related qualified interest rate management agreement. (Code 1981, § 50-17-103, enacted by Ga. L. 2005, p. 642, § 2/SB 227.)

50-17-104. Information required in annual financial statements.

The state party that has entered into a qualified interest rate management agreement shall include in its annual financial statements information with respect to each qualified interest rate management agreement it has authorized or entered into, including any information required by any accounting or regulatory standard to which the state party is subject. (Code 1981, § 50-17-104, enacted by Ga. L. 2005, p. 642, § 2/SB 227.)

50-17-105. Applicability of state law; jurisdiction.

When entering into any qualified interest rate management agreement authorized under this article, the agreement shall be governed by the laws of the State of Georgia, and jurisdiction over the state party in any matter concerning a qualified interest rate management agreement shall lie

exclusively in the courts of the State of Georgia or in the applicable federal court having jurisdiction and located within the State of Georgia. (Code 1981, § 50-17-105, enacted by Ga. L. 2005, p. 642, § 2/SB 227.)

CHAPTER 18

STATE PRINTING AND DOCUMENTS

Article 1

Information on State Stationery

Sec.

- 50-18-1. State stationery to contain telephone numbers for responses or questions; exemptions.

Article 2

Court Reports

- 50-18-20. Definitions.
- 50-18-21. Preparation of contract for state reports publication; public inspection.
- 50-18-22. Advertising for and accepting bids for state reports publication; contract with lowest bidder; right to reject bids.
- 50-18-23. Contractor to give bond.
- 50-18-24. State publisher of court reports; annual renewal of contract; publisher may succeed himself.
- 50-18-25. Publisher to act only on direction of reporter.
- 50-18-26. Content and appearance of reports; number of volumes per year.
- 50-18-27. Responsibilities of reporter; subject to dismissal if reports not published within six months of delivery.
- 50-18-28. Publisher to print and bind reports; liable for delay; opportunity to explain delay before panel.
- 50-18-29. Method of printing and binding reports; notice of deficiencies and time for cure; advice of panel regarding quality of reports.
- 50-18-30. Number of volumes ordered and produced.
- 50-18-31. Procedure for distribution of reports; discontinuance or resumption of distribution.
- 50-18-32. Production and sale of reports to citizens; liability for not having reports in stock; opportunity to explain failure to panel.

Sec.

- 50-18-33. Statement of charges to be paid or arbitrated; payment funds to come from particular appropriation; price of reports.
- 50-18-34. Copyright belongs to state.
- 50-18-35. Publisher to maintain means to reproduce volumes.
- 50-18-36. Upon expiration of contract, publisher authorized to sell reports; price.

Article 3

Government Documents

- 50-18-50 through 50-18-55 [Repealed].

Article 4

Inspection of Public Records

- 50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access; electronic access to records.
- 50-18-71. Right of access to make photographs or reproductions.
- 50-18-71.1. Approval of judge required for inspection of trial exhibits; reproduction of exhibits; public inspection.
- 50-18-71.2. Estimate of copying fees as condition for assessment.
- 50-18-72. When public disclosure not required; disclosure of exempting legal authority.
- 50-18-73. Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.
- 50-18-74. Penalty for violations; procedure for commencement of prosecution.
- 50-18-75. Confidentiality of communications between Office of Legislative Counsel and certain persons.
- 50-18-76. Written matter exempt from

Sec.		Sec.	
	disclosure under Code Section 31-10-25.	50-18-99.	Records management programs for local governments.
50-18-77.	Inapplicable to public records.	50-18-100.	Lifting restrictions on access to confidential, classified, or restricted records after 75 years; earlier lifting.
Article 5			
State Records Management			
50-18-90.	Short title.	50-18-101.	Use of confidential, classified, or restricted records for research; limitations.
50-18-91.	Definitions.	50-18-102.	Records as public property; disposing of records other than by approved retention schedule as misdemeanor; person acting under article not liable.
50-18-92.	Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.	50-18-103.	Construction of laws and rules.
50-18-93.	Duties of division.	Article 6	
50-18-94.	Duties of agencies.	Microforms	
50-18-95.	Agency heads retain authority to determine records required by departments; treatment of confidential records.	50-18-120.	Authority for establishment of standards.
50-18-96.	Copies of records as primary evidence.	50-18-121.	Limitations on liability.
50-18-97.	Effect of certified copies of records; fee.	Article 7	
50-18-98.	Title to records; access to records of constitutional officers.	“Multiracial” Classification	
		50-18-135.	“Multiracial” classification requirement; reporting racial data to federal agencies.

RESEARCH REFERENCES

ALR. — What constitutes legitimate research justifying inspection of state or local public records not open to inspection by general public, 40 ALR4th 333.

ARTICLE 1

INFORMATION ON STATE STATIONERY

Editor’s notes. — Ga. L. 1993, p. 1394, § 1, effective April 15, 1993, repealed the former article, relating to state printing and documents, which was reserved pursuant to Ga. L. 1990, p. 1466, § 2, effective April 11, 1990.

The article was part of the original Code enactment (Ga. L. 1981, Ex. Sess., p. 8) and was based on Ga. L. 1974, p. 1002, § 1 and Ga. L. 1989, p. 1634, § 1.

50-18-1. State stationery to contain telephone numbers for responses or questions; exemptions.

(a) As used in this Code section, the term “state agency” means any state department, board, bureau, commission, authority, council, or committee or any other state agency or instrumentality.

(b) All stationery used by any state agency for correspondence with members of the public shall have printed or typed thereon one or more telephone numbers to which responses or questions concerning such correspondence may be directed.

(c) This Code section shall not apply to:

(1) Stationery for the use of the office of the Governor; or

(2) Stationery for the use of any officer or agency or other entity of the judicial branch of state government.

(d) Subsection (b) of this Code section shall apply to all stationery ordered by state agencies after July 1, 1993. Until July 1, 1995, state agencies may continue to use stationery printed before July 1, 1993, which does not comply with subsection (b) of this Code section. (Code 1981, § 50-18-1, enacted by Ga. L. 1993, p. 1394, § 1.)

ARTICLE 2

COURT REPORTS

50-18-20. Definitions.

As used in this article, the term:

(1) “Publisher” means the state publisher of court reports who has been awarded the contract as defined in this article.

(2) “Reporter” means the reporter of the Supreme Court and Court of Appeals whose duties are set forth in Chapter 4 of Title 15.

(3) “Reports” means the official reports of the decisions of the Supreme Court or of the Court of Appeals, together with the usual title pages, indexes, etc., as well as the advance reports of the decisions of each court and a volume of rules applicable in the courts of this state. The rules volume shall include the Rules of the Supreme Court, the Rules of the Court of Appeals, the Unified Appeal, the Uniform Transfer Rules, the Uniform Rules for the various classes of courts, the Rules of the Judicial Qualifications Commission, the Code of Judicial Conduct, the Bar Admissions Rules, the Rules for Sentence Review Panel, the Rules and Regulations for the Organization and Government of the State Bar of Georgia, and any other rules or amendments as promulgated by the Supreme Court or the Court of Appeals, together with all applicable forms, title pages, indexes, etc. The rules volume shall consist of a post binder which will be updated periodically. (Ga. L. 1920, p. 237, § 2; Code 1933, § 90-201; Code 1933, § 90-201, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 1.)

50-18-21. Preparation of contract for state reports publication; public inspection.

The reporter, acting upon the advice of the Governor, shall prepare a contract to be awarded every four years, or as the occasion may require, which contract is renewable annually during those four years and provides for the publication of the state reports. This contract shall be on file for public inspection in the offices of the Department of Administrative Services. (Ga. L. 1920, p. 237, § 3; Code 1933, § 90-204; Code 1933, § 90-202, enacted by Ga. L. 1972, p. 460, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the

publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 49 et seq.

C.J.S. — 73A C.J.S., Public Contracts, § 16 et seq. 81A C.J.S., States, §§ 270, 282.

50-18-22. Advertising for and accepting bids for state reports publication; contract with lowest bidder; right to reject bids.

(a) Every four years the reporter shall present the contract provided for in Code Section 50-18-21 to the Department of Administrative Services for purposes of advertising for and accepting bids under the contract according to the established procedures of that department. After the deadline for the acceptance of bids, all bids submitted shall be turned over to the reporter by the Department of Administrative Services.

(b) The reporter, with the approval of the Governor, shall contract with the lowest bidder who, to the satisfaction of the Governor and reporter, is capable of full and adequate performance under the contract and complies with the terms and provisions of this law.

(c) The reporter has the right to reject any and all bids. In the event all bids are rejected, the reporter shall again advertise for bidders and follow the procedures as set forth in this Code section. (Ga. L. 1920, p. 237, § 3; Code 1933, § 90-205; Code 1933, § 90-203, enacted by Ga. L. 1972, p. 460, § 1.)

Cross references. — Competitive bidding for contracts to furnish supplies and services to state generally, § 50-5-67.

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the

publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 33, 36 et seq., 69 et seq.

C.J.S. — 73A C.J.S., Public Contracts, §§ 5 et seq., 17, 21 et seq. 81A C.J.S., States, § 270 et seq.

ALR. — Right of bidder for state or municipal contract to rescind bid on ground that bid was based upon his own mistake or that of his employee, 2 ALR4th 991.

50-18-23. Contractor to give bond.

The person to whom the contract is awarded shall give bond with adequate and satisfactory security in the sum of not less than \$25,000.00, to be payable to the Governor and his successors in office and to be conditioned that the contractor will perform his duties promptly and faithfully under the contract and carry out all provisions of law so far as they relate to the duties arising from the contract. The bond is subject to the approval of the Attorney General. (Ga. L. 1920, p. 237, § 4; Code 1933, § 90-206; Code 1933, § 90-204, enacted by Ga. L. 1972, p. 460, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 273, 293.

C.J.S. — 67 C.J.S., Officers and Public

Employees, § 61. 73A C.J.S., Public Contracts, § 42 et seq.

50-18-24. State publisher of court reports; annual renewal of contract; publisher may succeed himself.

(a) The person to whom the contract is awarded shall become and be known as the state publisher of court reports when his bond is approved by the Attorney General.

(b) The contract awarded to the publisher must be renewed each year during his four-year term. At the end of the four years, the reporter shall prepare a contract as set forth in Code Section 50-18-21 and follow the procedures set forth in Code Section 50-18-22.

(c) The state publisher can succeed himself as long as his bid on the contract is accepted by the reporter with the approval of the Governor. (Ga. L. 1920, p. 237, § 5; Code 1933, § 90-207; Code 1933, § 90-205, enacted by Ga. L. 1972, p. 460, § 1.)

50-18-25. Publisher to act only on direction of reporter.

In all matters pertaining to the publication of the reports, the publisher will act only upon the direction of the reporter. (Code 1933, § 90-216, enacted by Ga. L. 1972, p. 460, § 1.)

50-18-26. Content and appearance of reports; number of volumes per year.

(a) The reports shall contain the decisions rendered in all cases presented to the Supreme Court of Georgia and to the Court of Appeals of Georgia, an index of all cases reported, the rules and forms described in paragraph (3) of Code Section 50-18-20, and an index of all cases reported and all rules reported. No report shall contain any argument or brief of counsel beyond a statement of the major points and authorities.

(b) The reporter has the duty to ascertain that the reports, with the exception of the rules volume, are uniform in size and appearance. Whenever it becomes necessary, due to a variance in the number of decisions rendered, the reporter, in order to maintain the desired uniformity, may provide for the production of more than one volume from either court in any one year or may consolidate decisions of either court from two different years into one volume, but in no case shall the decisions of the Supreme Court be combined in one volume with the decisions of the Court of Appeals. (Laws 1856, Cobb's 1851 Digest, p. 455; Code 1863, § 222; Code 1868, § 216; Code 1873, § 230; Code 1882, § 230; Ga. L. 1882-83, p. 76, § 11; Civil Code 1895, §§ 1088, 1092; Civil Code 1910, §§ 1357, 1361; Code 1933, §§ 90-208, 90-209; Code 1933, § 90-206, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 2.)

50-18-27. Responsibilities of reporter; subject to dismissal if reports not published within six months of delivery.

(a) The reporter shall furnish to the publisher the manuscript of the decisions, rules, and forms, read the proof and correct the same, and furnish for each volume an index of the cases reported.

(b) If the reporter shall fail to publish the volumes of reports within six months of the time of the delivery to him of the last of the decisions to be included in a particular volume, he shall be subject to immediate dismissal unless good cause for such delay is shown to the satisfaction of a panel composed of three Justices of the Supreme Court appointed by the Chief Justice and two Judges of the Court of Appeals appointed by the Chief

Judge. (Laws 1845, Cobb's 1851 Digest, p. 452; Code 1863, § 223; Code 1868, § 217; Code 1873, § 231; Code 1882, § 231; Civil Code 1895, § 1093; Civil Code 1910, § 1362; Ga. L. 1920, p. 237, § 6; Code 1933, §§ 90-210, 90-211; Code 1933, § 90-207, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 1432, § 3.)

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the

publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att'y Gen. 71-103.

RESEARCH REFERENCES

C.J.S. — 73A C.J.S., Public Contracts, § 25.

50-18-28. Publisher to print and bind reports; liable for delay; opportunity to explain delay before panel.

(a) It shall be the duty of the publisher to print and bind the reports promptly within the prescribed time limit as set out in the contract.

(b) Should there be a delay in the printing or binding beyond the time set out in the contract, the reporter shall declare, upon notice to the publisher, the contract breached and the publisher shall become liable to the state for a sum to be assessed by the reporter, not exceeding \$1,000.00 per week for each week that the delay continues. If the delay is flagrant or continued more than 60 days, the reporter may declare the contract ended. The bond given by the publisher shall be liable for any sum assessed.

(c) The reporter, prior to declaring the contract breached, shall seek the advice of a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is not the Attorney General, the executive counsel, and the legislative counsel. The publisher shall have an opportunity to appear before this panel to explain the reasons for delay and to avoid liability for any sum which might be assessed against him. The panel can decide to provide the publisher an extended time in which to produce the reports or it may declare the publisher liable for a sum assessed by the reporter. The decision of the panel is final. (Ga. L. 1920, p. 237, § 6; Code 1933, §§ 90-211, 90-212; Code 1933, § 90-208, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 426, § 1.)

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, §§ 124, 125. **C.J.S.** — 73A C.J.S., Public Contracts, § 28.

50-18-29. Method of printing and binding reports; notice of deficiencies and time for cure; advice of panel regarding quality of reports.

- (a) The publisher, with the approval of the reporter, may choose the most efficient and advantageous method of producing the reports so long as the style and quality of the reports are not compromised by any change in the method of printing and binding the reports.
- (b) Should the work of printing and binding the reports or any part of them be done improperly, it shall be the duty of the reporter to advise the publisher by written notice of the deficiencies in the reports. The publisher shall have 60 days to make the necessary corrections. In the event the publisher fails to cure the deficiencies, the reporter may declare the contract breached and ended and assess the publisher for any damages the state may realize for the breach. The bond given by the publisher shall be liable for any sum assessed.
- (c) The reporter may seek, and must seek if requested in writing by the publisher, advice regarding the quality of the reports, such advice to be obtained from a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is not the Attorney General, the executive counsel, and the legislative counsel. The publisher and the reporter shall be allowed to appear before the panel and present any material relevant to the quality of the reports. The decision of the panel is final. (Ga. L. 1920, p. 237, § 7; Code 1933, § 90-219; Code 1933, § 90-209, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1988, p. 426, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

State reporter is proper budget unit for appropriations. — Because the reporter is primarily responsible for the production of the reports, and because the reporter has the responsibility of furnishing a manuscript of the decisions to the state publisher and of ascertaining proper performance by the publisher, and because failure of a report to be published is directly attributable to the reporter, the state reporter is the proper budget unit to which appropriations for state reports should be directed. 1971 Op. Att’y Gen. 71-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 119 et seq. **C.J.S.** — 73A C.J.S., Public Contracts, §§ 25, 27.

50-18-30. Number of volumes ordered and produced.

(a) The reporter shall order in writing from the publisher the number of volumes of each report required by the state when he delivers the manuscript to the publisher.

(b) The publisher shall produce the number of reports as is ordered by the reporter and upon completion of printing and binding shall deliver the reports to the reporter. (Code 1933, § 90-211, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1975, p. 741, § 6.)

50-18-31. Procedure for distribution of reports; discontinuance or resumption of distribution.

The reporter shall make distribution of the reports which shall be handled in accordance with this Code section:

(1) The reporter shall place all orders for the reports with the publisher. At any time the state librarian adds or eliminates a particular exchange point or determines that the number of copies of either of the reports needs to be changed, he or she shall notify the reporter of this fact in writing, and the reporter shall adjust his or her orders for new reports accordingly;

(2) All volumes distributed within this state to the state or to any of its subordinate departments, agencies, or political subdivisions, or to public officers or public employees within the state, other than to the state librarian for exchange purposes, shall be the property of the appropriate public officer or employee during his or her term of office or employment and shall be turned over to his or her successor; and the reporter shall take and retain a receipt from each such public officer or employee acknowledging this fact. Volumes distributed to the state librarian for exchange purposes, but handled for delivery to exchangees by the reporter on behalf and in the name of the state library, shall become the property of the recipient. The reporter shall at all times use the most economical method of shipment consistent with the safety and security of the volumes;

(3) The reporter shall make distributions of the reports in accordance with the following:

Archives, State	one copy
Commissioner of Insurance	one copy
Court of Appeals of Georgia	23 copies
(which number may be increased upon written order from the Chief Judge to the reporter)	
Executive Department	one copy

Georgia Institute of Technology	one copy
Georgia State University	one copy
Historical Society, Georgia	one copy
Human Resources, Department of	one copy
House Judiciary Committee	one copy
Labor, Department of	one copy
Law, Department of	six copies
(which number may be increased upon written order from the Attorney General)	
Legislative Counsel	one copy
(which number may be increased upon written order of the Legislative Counsel)	

Library, State

Exchange Program:

Each foreign government authority participating	one copy
Each state participating	one copy
Shelving	two copies

Newly created superior court circuits or judgeships ... as appropriate

Whenever a new superior court circuit or a new judgeship within a circuit shall be created, if the officer entitled to reports shall notify the reporter in writing of his or her assumption of office, the reporter shall add his or her position to those to receive reports and shall supply him or her with all earlier volumes.

Judge of the Probate Court (each county)	one copy
Public Service Commission	one copy
Recipients not named herein but named on the librarian's distribution list as of the date of his or her last distribution of the reports next preceding April 18, 1975 (each)	one copy

The reporter is authorized to add such names, in whole or in part, to his or her listing of distributees to receive future reports.

Reporter

Assistant reporter's desk	one copy
Copyright	three copies

Reporter's clerical staff	one copy
Reporter's desk	one copy
Secretary of State	one copy
Senate Judiciary Committee	one copy
Special or emergency circumstances	as appropriate

When it shall appear to the reporter that a worthy state purpose will be served thereby, he or she may add agencies or officers to the list of recipients of reports, provided that no courts or agencies of a local nature shall be added to the list.

Superior Courts

Clerks (each)	one copy
District Attorneys (each)	one copy
Judges (each)	one copy
Supreme Court of Georgia	18 copies
(which number may be increased upon written order from the Chief Justice to the reporter)	

United States Courts

Court of Appeals, Fifth Circuit	one copy
District Courts, Georgia	four copies
University of Georgia Law School Library	25 copies
Workers' Compensation, State Board of	six copies

The reporter may add additional recipients or additional copies to named recipients upon written order from the Chief Justice of the Supreme Court; and

(4) Notwithstanding the provisions of paragraph (3) of this Code section regarding distribution of reports to superior courts and to judges of the probate courts, the chief judge of the superior courts of any judicial circuit may, for any county within that circuit, have discontinued or restored the distribution of any of that county's authorized number of copies of reports, as such judge determines the needs therefor, upon written request to the librarian. In any event, at least one copy of each report shall be distributed to each county to be placed in the county law library or, if no such library is maintained, in the office of the judge of the probate court for the use of the general public. (Ga. L. 1920, p. 237, § 9; Code 1933, § 90-215; Code 1933, § 90-210, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1975, p. 741, § 5; Ga. L. 1982, p. 3, § 50; Ga. L. 1982, p.

702, §§ 1, 5; Ga. L. 1983, p. 3, § 39; Ga. L. 1986, p. 855, § 30; Ga. L. 1987, p. 3, § 50; Ga. L. 2008, p. 267, § 8/SB 482.)

The 2008 amendment, effective May 6, 2008, inserted “or her” and “or she” throughout this Code section; deleted former paragraph (1), which read: “The state librarian shall furnish the reporter a written memorandum indicating the number of volumes of each new report which will be required for purposes of the exchange set forth in Code Sections 50-11-5 and 50-11-6. The reporter shall arrange for delivery to exchangees, on behalf and in the name of the state library, of volumes of reports distributed to the state librarian for exchange purposes. The state librarian shall supply the reporter with shipping labels containing the

names and addresses of the exchangees;” redesignated former paragraphs (2) through (5) as present paragraphs (1) through (4), respectively; in paragraph (3), deleted “(other than State Library)” following “Law, Department of” in the list of departments; and, in paragraph (4), substituted “paragraph (3) of this Code section” for “paragraph (4) of this Code section” near the beginning of the first sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, “Workers’ Compensation” was substituted for “Worker’s Compensation” in paragraph (4) (now paragraph (3)).

OPINIONS OF THE ATTORNEY GENERAL

Placement of reports. — Whether a set of Georgia Reports, Session Laws, Official Code of Georgia, House and Senate Journals and Court Journals is required to be in the probate court of each county as well as in the county law library is governed by Ga. Law

1982, p. 793, and O.C.G.A. § 50-18-31. 1983 Op. Att’y Gen. No. U83-40.

County law libraries are available for use by the general public. 1983 Op. Att’y Gen. No. U83-40.

50-18-32. Production and sale of reports to citizens; liability for not having reports in stock; opportunity to explain failure to panel.

(a) In addition to the reports to be furnished to the state as previously provided, the publisher shall produce a sufficient number for sale to the citizens of the state. The publisher shall at all times during his contract keep on hand in the capital city of the state an adequate supply of the reports such publisher has published during that contract period for sale to the citizens of the state and to the state when it so requires.

(b) In the event the publisher does not have in stock any report published during the contract period that is needed by the state or any citizen of the state, the reporter shall, upon notice to the publisher, declare the contract breached; and the publisher shall become liable to the state for a sum, to be assessed by the reporter, payable to the state for each week that the report is not available but in no event shall the total of the sum assessed by the reporter exceed the amount of the publisher’s bond. In the event of undue delay, the reporter may declare the contract ended. The bond given by the publisher shall be liable for any sum assessed.

(c) The reporter, prior to declaring the contract breached, shall seek the advice of a panel composed of the Chief Justice of the Supreme Court, the Chief Judge of the Court of Appeals, an appointee of the Governor who is

not the Attorney General, the executive counsel, and the legislative counsel. The publisher shall have an opportunity to appear before this panel to explain the reason for his failure to have in stock a particular volume and to avoid liability for any sum which may be assessed against him. The panel can decide to provide the publisher an extended period of time to produce the required volumes of reports, or it may declare the publisher liable for a sum assessed by the reporter; and, if the reporter has so requested, it may declare the contract with the publisher ended. In any case, the decision of the panel is final. (Ga. L. 1920, p. 237, § 9; Code 1933, § 90-222; Code 1933, § 90-212, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 1, 4; Ga. L. 1988, p. 426, § 1.)

50-18-33. Statement of charges to be paid or arbitrated; payment funds to come from particular appropriation; price of reports.

(a) Upon delivery of the volumes of each report to the proper recipient, the publisher shall present to the reporter an itemized statement of charges for which the state is liable. If the statement appears erroneous to the reporter, he shall contact the publisher in an effort to correct the errors. In the event no agreement can be reached, the Attorney General shall act as arbiter between the reporter and the publisher.

(b) If the reporter is satisfied as to the correctness of the statement of charges, he shall pay the publisher accordingly. The payment shall be made from funds appropriated to the courts by the General Assembly for the publication and distribution of the reports of the Supreme Court and the Court of Appeals. This particular appropriation is to be administered by the reporter.

(c) The price at which the reports shall be furnished to the state and to the citizens of the state shall not exceed the price set forth in the contract. (Ga. L. 1920, p. 237, § 10; Code 1933, §§ 90-213, 90-217; Code 1933, § 90-213, enacted by Ga. L. 1972, p. 460, § 1.)

50-18-34. Copyright belongs to state.

The reports shall be copyrighted and the copyright shall belong to the state. (Ga. L. 1920, p. 237, § 13; Code 1933, § 90-218; Code 1933, § 90-214, enacted by Ga. L. 1972, p. 460, § 1.)

RESEARCH REFERENCES

- Am. Jur. 2d.** — 18 Am. Jur. 2d, Copyright and Literary Property, § 57. Intellectual Property, §§ 105, 106, 139, 154 et seq.
- C.J.S.** — 18 C.J.S., Copyrights and Intel-

50-18-35. Publisher to maintain means to reproduce volumes.

During the term of his contract, the publisher shall maintain the means to reproduce any volume published during the term of the contract at a time subsequent to the printing of that volume. (Code 1933, § 90-215, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 2, 5.)

50-18-36. Upon expiration of contract, publisher authorized to sell reports; price.

Upon the expiration of his contract, the publisher may sell all unsold copies of the reports to any person, firm, corporation, or entity, public or private. The price of any such copies shall remain the same as fixed by the contract under which such copies were published. (Ga. L. 1920, p. 237, § 12; Code 1933, § 90-221; Code 1933, § 90-217, enacted by Ga. L. 1972, p. 460, § 1; Ga. L. 1982, p. 892, §§ 3, 6.)

ARTICLE 3

GOVERNMENT DOCUMENTS

50-18-50 through 50-18-55.

Reserved. Repealed by Ga. L. 2001, p. 800, § 1, effective July 1, 2001.

Editor's notes. — This article, consisting of Code Sections 50-18-50 through 50-18-55, relating to the Georgia Government Documents Act, was based on Ga. L. 1968, p. 1186,

§§ 1, 2, and 4 through 7, Ga. L. 1971, p. 216, §§ 1, 2, and 4 through 7, Ga. L. 1972, p. 1015, § 405, and Ga. L. 1992, p. 6, § 50.

ARTICLE 4

INSPECTION OF PUBLIC RECORDS

Cross references. — Inspection of files and records relating to juvenile court proceedings, § 15-11-58. Registry for uniform environmental covenants, § 44-16-12. Furnishing information to out-of-state coroners, § 45-16-10. Limited disclosure of autopsy photographs, § 45-16-27.

Law reviews. — For article surveying recent developments in administrative law, see 39 Mercer L. Rev. 33 (1987). For article, "State Administrative Agency Contested

Case Hearings," see 24 Ga. St. B.J. 193 (1988). For article, "Georgia's Open Records and Open Meetings Laws: A Continued March Toward Government in the Sunshine," see 40 Mercer L. Rev. 1 (1988). For article, "Education Law," see 53 Mercer L. Rev. 281 (2001). For article, "Local Government Law," see 53 Mercer L. Rev. 389 (2001). For article, "General Overview of Procurement Process," see 10 Ga. St. B.J. 12 (2005).

JUDICIAL DECISIONS

Denial of defendant's motion to inspect files. — Where defendant filed a post-trial motion to inspect the state's files on the

cases of two codefendants, who, by the time this motion was made, had been acquitted, and the state responded that, assuming its

files were "public records" within the meaning of the law, these cases were still under investigation for possible federal prosecutions, the trial court did not err when it denied the defendant's motion. *Castell v. State*, 250 Ga. 776, 301 S.E.2d 234 (1983), *aff'd*, 252 Ga. 418, 314 S.E.2d 210 (1984).

Applicability of article. — O.C.G.A. Art. 4,

Ch. 18, T. 50 does not provide for open and affirmative disclosure of county official's communications with the official's attorney or for disclosure by county sheriff of sheriff's policies with respect to training deputies. *Dodson v. Floyd*, 529 F. Supp. 1056 (N.D. Ga. 1981).

OPINIONS OF THE ATTORNEY GENERAL

Information concerning degrees and awards by University of Georgia. — Unless and until the University of Georgia designates information concerning degrees and awards to be directory information, as defined by 20 U.S.C. § 1232g(b)(1), gives public notice and allows reasonable time for response, or until a student consents to release of such information, 20 U.S.C. § 1232g, the Family Educational and Private Rights Act, requires the information to remain confidential. Thus, the Open Records Act, O.C.G.A. Art. 4, Ch. 18, T. 50, does not require disclosure of such information. 1981 Op. Att'y Gen. No. 81-48.

Salary information of county employee accessible to public. — Where salary information of county employee is contained solely within employee's personnel file, it is not accessible to public; however, where such information is included as part of an-

other public record, it is accessible to public. 1981 Op. Att'y Gen. No. U81-40.

Availability of content of personnel record to employee concerned. — While writings of sort traditionally found in personnel files are not ordinarily available to faculty member or employees concerned by virtue of O.C.G.A. Art. 4, Ch. 18, T. 50 in and of itself, they could be obtained by faculty member or employee through routine "discovery" procedures (e.g., subpoenas or notices to produce), and in many instances, at least in absence of some valid claim of privilege or breach of some right of privacy or confidentiality of someone other than faculty member or employee requesting access, the more prudent course of action would be to make same available even where not "required" by letter of that article. 1981 Op. Att'y Gen. No. 81-71.

50-18-70. Inspection of public records; printing of computerized indexes of county real estate deed records; time for determination of whether requested records are subject to access; electronic access to records.

(a) As used in this article, the term "public record" shall mean all documents, papers, letters, maps, books, tapes, photographs, computer based or generated information, or similar material prepared and maintained or received in the course of the operation of a public office or agency. "Public record" shall also mean such items received or maintained by a private person or entity on behalf of a public office or agency which are not otherwise subject to protection from disclosure; provided, however, this Code section shall be construed to disallow an agency's placing or causing such items to be placed in the hands of a private person or entity for the purpose of avoiding disclosure. Records received or maintained by a private person, firm, corporation, or other private entity in the performance of a service or function for or on behalf of an agency, a public agency, or a public office shall be subject to disclosure to the same extent that such records would be subject to disclosure if received or maintained by such

agency, public agency, or public office. As used in this article, the term “agency” or “public agency” or “public office” shall have the same meaning and application as provided for in the definition of the term “agency” in paragraph (1) of subsection (a) of Code Section 50-14-1 and shall additionally include any association, corporation, or other similar organization which: (1) has a membership or ownership body composed primarily of counties, municipal corporations, or school districts of this state or their officers or any combination thereof; and (2) derives a substantial portion of its general operating budget from payments from such political subdivisions.

(b) All public records of an agency as defined in subsection (a) of this Code section, except those which by order of a court of this state or by law are prohibited or specifically exempted from being open to inspection by the general public, shall be open for a personal inspection by any citizen of this state at a reasonable time and place; and those in charge of such records shall not refuse this privilege to any citizen.

(c) Any computerized index of a county real estate deed records shall be printed for purposes of public inspection no less than every 30 days and any correction made on such index shall be made a part of the printout and shall reflect the time and date that said index was corrected.

(d) No public officer or agency shall be required to prepare reports, summaries, or compilations not in existence at the time of the request.

(e) In a pending proceeding under Chapter 13 of this title, the “Georgia Administrative Procedure Act,” or under any other administrative proceeding authorized under Georgia law, a party may not access public records pertaining to the subject of the proceeding pursuant to this article without the prior approval of the presiding administrative law judge, who shall consider such open record request in the same manner as any other request for information put forth by a party in such a proceeding. This subsection shall not apply to any proceeding under Chapter 13 of this title, relating to the revocation, suspension, annulment, withdrawal, or denial of a professional education certificate, as defined in Code Section 20-2-200, or any personnel proceeding authorized under Part 7 and Part 11 of Article 17 and Article 25 of Chapter 2 of Title 20.

(f) The individual in control of such public record or records shall have a reasonable amount of time to determine whether or not the record or records requested are subject to access under this article and to permit inspection and copying. In no event shall this time exceed three business days. Where responsive records exist but are not available within three business days of the request, a written description of such records, together with a timetable for their inspection and copying, shall be provided within that period; provided, however, that records not subject to inspection under this article need not be made available for inspection and copying or

described other than as required by subsection (h) of Code Section 50-18-72, and no records need be made available for inspection or copying if the public officer or agency in control of such records shall have obtained, within that period of three business days, an order based on an exception in this article of a superior court of this state staying or refusing the requested access to such records.

(g) At the request of the person, firm, corporation, or other entity requesting such records, records maintained by computer shall be made available where practicable by electronic means, including Internet access, subject to reasonable security restrictions preventing access to nonrequested or nonavailable records. (Ga. L. 1959, p. 88, § 1; Code 1981, § 50-18-70; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 1; Ga. L. 1992, p. 1061, § 5; Ga. L. 1992, p. 1545, § 1; Ga. L. 1992, p. 2829, § 2; Ga. L. 1993, p. 1394, § 2; Ga. L. 1993, p. 1436, §§ 1, 2; Ga. L. 1994, p. 618, § 1; Ga. L. 1998, p. 128, § 50; Ga. L. 1999, p. 552, §§ 1, 2.)

Cross references. — Right of shareholders to inspect books and records of corporations, § 14-2-1602. Confidentiality of records relating to adoption proceedings, § 19-8-18. Opening of primary and election records of Secretary of State for inspection by public, § 21-2-51. Opening of primary and election records of election superintendents for inspection by public, § 21-2-72. Disclosure and publication of vital records, § 31-10-25. Inspection of motor vehicle records, § 40-3-24. Confidentiality of reports, files, and other documents, relating to probation, § 42-8-40. Confidentiality of records of State Board of Pardons and Paroles, § 42-9-53. Limited disclosure of autopsy photographs, § 45-16-27. Confidentiality of income tax information, §§ 48-7-60, 48-7-61.

Code Commission notes. — Ga. L. 1992, p. 1061, § 5, added new subsections (d) and (e). Ga. L. 1992, p. 1545, § 1, added new subsection (c) and redesignated former subsection (c) as subsection (d). Ga. L. 1992, p. 2829, § 2, added a new subsection (d). Pursuant to Code Section 28-9-5, in 1992, former subsection (c) was redesignated as subsection (f), and the new subsection added by Ga. L. 1992, p. 2829, § 2, was redesignated as subsection (g).

Law reviews. — For article discussing the right of access to public records of local government, see 13 Ga. L. Rev. 97 (1978). For article, "Informational Privacy Under the Open Records Act," see 32 Mercer L. Rev. 393 (1980). For article surveying developments in Georgia local government law

from mid-1980 through mid-1981, see 33 Mercer L. Rev. 187 (1981). For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986). For annual survey of state and local taxation, see 38 Mercer L. Rev. 337 (1986). For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For annual survey of local government law, see 44 Mercer L. Rev. 309 (1992). For survey article on administrative law for the period from June 1, 1997 through May 31, 1999, see 51 Mercer L. Rev. 103 (1999). For annual survey article discussing developments in education law, see 52 Mercer L. Rev. 221 (2000). For article, "General Overview of Procurement Process," see 10 Ga. St. B.J. 12 (2005). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of local government law, see 57 Mercer L. Rev. 289 (2005). For annual survey of criminal law, see 58 Mercer L. Rev. 83 (2006). For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007). For survey article on local government law, see 60 Mercer L. Rev. 263 (2008).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on the 1994 amendment of this Code section, see 11 Ga. St. U.L. Rev. 265 (1994). For note on 1999 amendment to this Code section in this article, see 16 Ga. St. U.L. Rev. 262 (1999). For note on 1999

amendment to this Code section in this article, see 16 Ga. St. U.L. Rev. 268 (1999).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
PUBLIC RECORDS
BALANCING OF INTERESTS
EXCEPTIONS

General Consideration

Legislative intent. — The General Assembly did not intend that all public records of law enforcement officers and officials be open for inspection by a citizen as soon as such records are prepared. *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976).

Intent of General Assembly was to afford to public at large access to public records with the exceptions of certain information which is exempt from disclosure. *Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978).

Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., does not permit recovery of compensatory or punitive damages. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Purpose of inspection of government documents provisions is not only to encourage public access to information in order that the public can evaluate the expenditure of public funds and the efficient and proper functioning of its institutions, but also to foster confidence in government through openness to the public. *Athens Observer, Inc. v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980) (see O.C.G.A. Art. 4, Ch. 18, T. 50).

Purpose of the Open Records Act, O.C.G.A. Art. 4, Ch. 18, T. 50, is to encourage public access to government information and to foster confidence in government through openness to the public. *McFrugal Rental of Riverdale, Inc. v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992).

Actions to enjoin disclosure of information authorized. — Open Records Act, O.C.G.A. § 50-18-70 et seq., provides the jurisdictional basis for a cause of action by individuals to enjoin the disclosure of legally protected information. *Bowers v. Shelton*,

265 Ga. 247, 453 S.E.2d 741 (1995).

Construction of statutory exemptions. — Any purported statutory exemption from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., must be narrowly construed. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992).

Inquiries under Open Records Act. — In suits under the Open Records Act, O.C.G.A. § 50-18-70 et seq., the first inquiry is whether the records are “public records”; if the records are, the second inquiry is whether the records are protected from disclosure under the list of exemptions or under any other statute; if the records are not exempt, then the question is whether the records should be protected by court order, but only if there is a claim that disclosure would invade individual privacy. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992).

If a person or an agency having custody of the records fails to affirmatively respond to an open records request within three business days by notifying the requesting party of the determination as to whether access will be granted, the Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., has been violated; under such circumstances, the person or agency has necessarily failed to grant reasonable access to the files in the person or agency's custody. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Oral requests allowed. — The fact that some of the newspaper's requests to examine records pertaining to the sheriff's “inmate telephone account,” were oral rather than written did not diminish their efficacy under the Open Records Act, O.C.G.A. § 50-18-70 et seq., for there is no requirement that those requests be in writing. *Howard v. Sumter Free Press, Inc.*, 272 Ga. 521, 531 S.E.2d 698 (2000).

General Consideration (Cont'd)

Request not made. — Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., claim against a county attorney was properly dismissed as no records request was made to the attorney. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Standing of Secretary of State to object to request. — The Georgia Secretary of State had standing to object to a request under the Open Records Act for election records held by a county. Under O.C.G.A. §§ 21-2-30, 21-2-31, 21-2-32, 21-2-50 et seq., and 45-13-20 et seq., the Secretary was charged with the supervision of all elections in Georgia and thus had the right to seek judicial intervention. *Smith v. DeKalb County*, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, 2007 Ga. LEXIS 861 (Ga. 2007); U.S. , 128 S. Ct. 1882, 170 L. Ed. 2d 757 (2008).

Reasonable access to files. — A custodian of public records complies with an open records request when the custodian grants reasonable access to the files in the custodian's custody; the custodian is not required to comb through the files and locate, inspect and produce the documents sought. *Felker v. Lukemire*, 267 Ga. 296, 477 S.E.2d 23 (1996).

Denial of access to records was unauthorized. — In denying a request for records under the Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., an agency was allowed to rely only on the legal authority specified in a response denying an initial request, so an insurance commissioner was not allowed to deny an ORA request for records relating to an investigation of an insurer only on the insurer's proffered basis of the pendency of the investigation, and as the insurer had already been given the chance to review the report and resolve the matter, but later withdrew its request for a hearing, the commissioner's general policy of not releasing reports until the subject of the investigation had a chance to review the report and resolve the matter was unauthorized. *Hoffman v. Oxendine*, 268 Ga. App. 316, 601 S.E.2d 813 (2004).

Meaning of administrative proceedings. — The procedures set forth in O.C.G.A. § 31-6-40 et seq., for consideration of a certificate of need by the Health Planning

Agency and appeal to the Health Planning Review Board, establish administrative proceedings within the meaning of O.C.G.A. § 50-18-70(d). *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Standing to recover loaned FBI documents. — United States had standing to bring suit in a federal court to recover FBI documents loaned to a city during a homicide investigation, even though a state court had ordered disclosure of the documents pursuant to the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., and some documents had already been disclosed. *United States v. Napper*, 887 F.2d 1528 (11th Cir. 1989).

Burden on custodian to explain denial of access. — If there has been a request for identifiable public records within the possession of the custodian thereof, the burden is cast on that party to explain why the records should not be furnished. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

Effect of pendency of habeas-corpus petition. — Pendency of a habeas-corpus petition filed by the defendant who was convicted of two of the "Atlanta child murders" did not justify a blanket nondisclosure of the files of other victims which had been introduced to demonstrate a "pattern" among the murders. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

When a habeas court found an inmate's ineffective assistance claim was not procedurally barred, under O.C.G.A. § 9-14-48(d), for failing to raise it on direct appeal because the inmate "was not legally permitted to access the criminal records" of two men with the inmate at the time of the murder or of the man to whom the inmate confessed immediately after the murder, under the Georgia Open Records Act, O.C.G.A. § 50-18-70, until after the inmate completed the direct appeal, this did not overcome procedural bars to raising new claims of ineffective assistance of counsel because it did not specify what "criminal records" had been newly discovered that showed prejudice of constitutional proportions. *Schofield v. Meders*, 280 Ga. 865, 632 S.E.2d 369 (2006), cert. denied, 127 S. Ct. 958, 2007 U.S. LEXIS 257, 166 L.Ed.2d 729 (2007).

The Board of Regents of the University System of Georgia is subject to the Open Records Act. O.C.G.A. § 50-18-70 et seq., since it is an agency of the state. *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 378 S.E.2d 305 (1989).

Private, nonprofit hospital corporations that served as vehicles through which public hospital authorities carried out their official responsibilities were subject to the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., and the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Northwest Ga. Health Sys. v. Times-Journal, Inc.*, 218 Ga. App. 336, 461 S.E.2d 297 (1995).

Proposed inquest closed to public. — Relief sought in a newspaper publisher's suit against a coroner to prohibit the coroner from closing to the public a scheduled inquest was governed by the Open Meetings Law, O.C.G.A. § 50-14-1 et seq., and the Open Records Law, O.C.G.A. § 50-18-70 et seq. *Kilgore v. R.W. Page Corp.*, 259 Ga. 556, 385 S.E.2d 406 (1989).

Access by personal computer not required. — Although database of real estate deed records was a public record within the meaning of the Open Records Act, O.C.G.A. § 50-18-70 et seq., the clerk of court was not required to create a new program to provide public access with personal computers. *Jersawitz v. Hicks*, 264 Ga. 553, 448 S.E.2d 352 (1994).

Applicability of 1989 amendment to insurance code. — A 1989 amendment to the insurance code, which exempts certain documents from the open records law, applied to a case which was on appeal at the time the amendment became effective. *Evans v. Belth*, 193 Ga. App. 757, 388 S.E.2d 914 (1989).

Request for injunction to force compliance with Open Records Act, O.C.G.A. § 50-18-70 et seq., was premature since, at the time the request was made, plaintiff retained an adequate legal remedy, namely the right to seek defendants' records through discovery procedures in plaintiff's federal action. *Millar v. Fayette County Sheriff's Dep't*, 241 Ga. App. 659, 527 S.E.2d 270 (1999).

Trial court incorrectly held that counterclaim alleging violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., was based on the prayer for relief contained

in the original complaint filed by a housing authority, and since the housing authority failed to show that the factual issues regarding the counterclaim must have been decided in its favor, the trial court erred in granting summary judgment in favor of the housing authority on this claim. *Strange v. Hous. Auth. of Summerville*, 268 Ga. App. 403, 602 S.E.2d 185 (2004).

Abuse of discretion not found. — Trial court did not abuse the court's discretion in denying an individual's petition for mandamus, attorney's fees, and expenses under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as the individual sued without following-up with the city on the records request; the individual failed to show that the city acted without substantial justification in not complying with the Act as required by O.C.G.A. § 50-18-73(b). *Everett v. Rast*, 272 Ga. App. 636, 612 S.E.2d 925 (2005).

Attorney fees. — County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. *Benefit Support, Inc. v. Hall County*, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, 2007 Ga. LEXIS 214 (Ga. 2007).

Cited in *Rentz v. City of Moultrie*, 231 Ga. 579, 203 S.E.2d 216 (1974); *Morton v. Skrine*, 242 Ga. 844, 252 S.E.2d 408 (1979); *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119 (1980); *Bennett v. State*, 158 Ga. App. 421, 280 S.E.2d 429 (1981); *Price v. Fulton County Comm'n*, 170 Ga. App. 736, 318 S.E.2d 153 (1984); *City of Atlanta v. Pacific & S. Co.*, 257 Ga. 587, 361 S.E.2d 484 (1987); *Conklin v. Zant*, 263 Ga. 165, 430 S.E.2d 589 (1993); *Ford v. City of Oakwood*, 905 F. Supp. 1063 (N.D. Ga. 1995); *Bogle v. McClure*, 332 F.3d 1347 (11th Cir. 2003); *Peacock v. Spivey*, 278 Ga. App. 338, 629 S.E.2d 48 (2006); *Fulton DeKalb Hosp. Auth. v. Miller & Billips*, 293 Ga. App. 601, 667 S.E.2d 455 (2008).

Public Records

“Public records” defined. — Documents, papers, and records prepared and maintained in the course of the operation of a public office are “public records” within the meaning of this section, and it is immaterial that such documents, papers, and records were not required to be prepared and maintained pursuant to a statute or ordinance. *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976); *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 316 S.E.2d 449 (1984).

The 1980 amendment of the definition of “public records” in O.C.G.A. § 50-14-1(b) does not indicate a legislative intent to modify the definition of “public records” set forth in *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976). *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 316 S.E.2d 449 (1984).

Tax records that the individual submitted to the city in the individual’s successful attempt to get certified as a disadvantaged business eligible to be awarded city contracts pursuant to that designation were “public records” because they were received by the city in the course of its operations and were used by it to determine whether the individual qualified for the program; also, since the individual could not show an exception existed to the corporation’s request for disclosure of those records for the limited purpose of evaluating whether the city properly designated the individual as a disadvantaged business, the trial court properly granted summary judgment to the corporation on its disclosure request. *City of Atlanta v. Corey Entm’t, Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004).

Time for responding to records request. — Under O.C.G.A. § 50-18-70(f), the three-day time period to respond to a records request commences upon delivery of the request to the agency, rather than the particular employee in charge of the records. *Unified Gov’t v. Athens Newspapers, LLC*, 284 Ga. 192, 663 S.E.2d 248 (2008).

Communications to county officials from attorney are county records and, therefore, are not privileged communications between an attorney and client. *Crow v. Brown*, 332 F. Supp. 382 (N.D. Ga. 1971), *aff’d*, 457 F.2d 788 (5th Cir. 1972).

Report to state university. — A report representing the final analysis and recommendations after study by paid consultants to a state university, evaluating the mathematical departments, is a public record. *Athens Observer, Inc. v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980).

Applications for position of university president. — Applications submitted by candidates for the position of Georgia State University president, and the resumes and vitae, which were products of the applicants themselves, although they were materials upon which, in part, “confidential evaluations” were based, were not evaluations. Hence the resumes and vitae were not exempt from disclosure. *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 378 S.E.2d 305 (1989).

Financial records of University of Georgia Athletic Association. — Because the president of the University of Georgia is charged with controlling the intercollegiate sports program at the university and because the maintenance of documents relating to the assets, liabilities, income, and expenses of the intercollegiate sports program is an integral part thereof, regardless of whether the documents are prepared by employees of a private Athletic Association or by the president as treasurer of that association, it is clear that they are documents, papers, and records prepared and maintained in the course of the operation of a public office, and are therefore “public records” under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Macon Tel. Publishing Co. v. Board of Regents*, 256 Ga. 443, 350 S.E.2d 23 (1986).

Records pertaining to University of Georgia athletics. — With respect to information pertaining to athletics at the University of Georgia, the following are public records: initial reports, prepared by coaches, of outside income; contracts between coaches and suppliers of equipment and apparel for athletes; and information related to radio and television broadcasts, whether produced by the university or as part of the university’s exclusive rights to broadcast football and basketball games. However, contracts between individual coaches and outside entities to make speaking appearances or to provide commentary during certain basketball broadcasts were not public records, where there was no evidence that the docu-

ments related to athletic events involving the university. *Dooley v. Davidson*, 260 Ga. 577, 397 S.E.2d 922 (1990).

Records related to construction of racing hall of fame. — Records relating to bids to build a racing hall of fame and to host a football game were subject to the Open Records Act (Act), O.C.G.A. § 50-18-70 et seq., because public officials participated in the preparation and promotion of the bids, the bids required spending public funds or use of public resources, and the bid documents were “received” within the meaning of the Act. *Cent. Atlanta Progress, Inc. v. Baker*, 278 Ga. App. 733, 629 S.E.2d 840 (2006).

Student organization court records of the University of Georgia concerning alleged university rules and regulations violations on the part of fraternities and sororities were “public records” subject to the “Open Records Act”, O.C.G.A. § 50-18-70 et seq., and not exempted by O.C.G.A. § 50-18-72(a) by virtue of any federal legislation. *Red & Black Publishing Co. v. Board of Regents*, 262 Ga. 848, 427 S.E.2d 257 (1993).

Consultant appearance contract of a university athletic coach relates to a private activity, is not a public record, and need not be disclosed. *Cremins v. Atlanta Journal*, 261 Ga. 496, 405 S.E.2d 675 (1991).

Records of private university’s police force. — Records of a campus police force of a private university were not subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., as the university was a private institution that did not receive any funding from the state, the campus police were employees of that entity pursuant to the authority of O.C.G.A. § 20-8-2, and the fact that the police performed a public function did not make their records into public records; the fact that the campus police were given authority to perform certain functions by the Campus Policemen Act, O.C.G.A. § 20-8-1 et seq., and the Georgia Peace Officer Standards and Training Act, O.C.G.A. § 35-8-1 et seq., did not make the campus police officers or employees of a public office or agency for purposes of the Open Records Act. *The Corp. of Mercer Univ. v. Barrett & Farahany, L.L.P.*, 271 Ga. App. 501, 610 S.E.2d 138 (2005).

Personnel records of school bus drivers in the possession of a private company trans-

porting pupils under a contract with a city school system were “public records” subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Hackworth v. Board of Educ.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994).

Private corporation’s records were public. — Despite private status of corporations created as part of a reorganization of county hospital authority, when assets of the authority were transferred to one or more of the corporations, and the records of all of the corporations remained in the possession and control of the authority, the private corporations were subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the requested documents were “public records” under that Act. *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Real property ad valorem digests, returns, and related records, not having been made confidential by law, are subject to inspection under O.C.G.A. § 50-18-70. *Pensyl v. Peach County*, 252 Ga. 450, 314 S.E.2d 434 (1984).

Records of criminal investigations fall within the provisions of O.C.G.A. § 50-18-70 if the criminal investigation has been completed. *Cox Enters., Inc. v. Harris*, 256 Ga. 299, 348 S.E.2d 448 (1986).

Investigatory reports. — An investigatory report concerning claims of misconduct against an employee of the State Board of Pardons and Paroles was a public record and was not exempt from disclosure under O.C.G.A. § 50-18-72. *Fincher v. State*, 231 Ga. App. 49, 497 S.E.2d 632 (1998).

Records of Georgia Bureau of Investigation’s investigation of Department of Agriculture employees and administrative law judge’s order reviewing that investigation were public records subject to disclosure. *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 316 S.E.2d 449 (1984).

Retrial possibility not grounds for nondisclosure of investigatory files. — When a murder conviction and death sentence resulting from the prosecution have been affirmed on appeal, but a rape conviction has been reversed on a ground that leaves the state free to retry the defendant, the possible retrial of the defendant does not warrant nondisclosure to defendant of criminal investigatory files, where the agency custodians of the files at issue failed to carry their

Public Records (Cont'd)

burden of showing an imminent proceeding on the rape charge against defendant to exempt such files from disclosure pursuant to O.C.G.A. § 50-18-72(a)(4). *Parker v. Lee*, 259 Ga. 195, 378 S.E.2d 677 (1989).

Information incorporated into investigatory case file. — Although motor vehicle records used by police during the “Atlanta child murders” case were not open for public inspection under the Public Records Act, O.C.G.A. § 50-18-70 et seq., this did not preclude public disclosure where a law-enforcement officer who had inspected the records incorporated information therefrom into an investigatory case file. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

Records of Georgia DOT. — Neither the “state matter” privilege nor the “secret of state” privilege exempted cost estimates of the DOT from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992).

Disclosure by bank that customer was involved with some motor vehicles financed through the bank was not an invasion of privacy based on public disclosure of private facts, as, at the time of the disclosure, motor vehicle certificates of title were public records open to public inspection. *Williams v. Coffee County Bank*, 168 Ga. App. 149, 308 S.E.2d 430 (1983).

Peer review reports construed. — The reports generated as part of the state’s hospital licensing activities rather than as peer review records are not protected from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., or by O.C.G.A. § 31-7-15(d). *Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Hospital accreditation review organization records. — Hospital accreditation records generated by a nonprofit organization are not protected from disclosure as the records of a confidential review organization under O.C.G.A. § 31-7-133 because the organization is not a “review organization” comprised primarily of “professional health care providers” as those terms are defined by O.C.G.A. § 31-7-131. *Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Because hospital accreditation surveys do not fit into any of the categories of records exempted from disclosure, the policy underlying the Open Records Act, O.C.G.A. § 50-18-70 et seq., mandates their release. The public has a legitimate interest in the records which make up the Department of Human Resources’ hospital licensing decisions. *Georgia Hosp. Ass’n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Records of state health benefit plan administrator. — Records kept by the administrator of the State Health Benefit Plan were public records under O.C.G.A. § 50-18-70(a). Although the administrator was a private entity, its administration of the Plan involved the expenditure of substantial public funds, and public officials were significantly involved in it; the administrator was the vehicle through which the Georgia Department of Community Health carried out its public function of administering the Plan; and the records were maintained, at least in part, in order for the administrator to comply with its contractual obligations in administering the Plan. *United HealthCare of Ga., Inc. v. Ga. Dep’t of Cmty. Health*, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

Records available for public inspection. — Public records prepared and maintained in a concluded investigation of alleged or actual criminal activity should be available for public inspection. *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976).

Trial court properly granted summary judgment to the corporation on the corporation’s request for disclosure of the individual’s tax records, which the corporation sought for the limited purpose of determining whether the individual’s business properly qualified as a disadvantaged business regarding the awarding to it of a city contract for airport advertising, as Georgia’s Open Records Act, O.C.G.A. § 50-18-70 et seq., favored the disclosure of public records and neither the individual nor the city could find a specific exception that applied to bar disclosure under such circumstances. *City of Atlanta v. Corey Entm’t, Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004).

Failure to provide access to documents in criminal charge not fatal. — Although a criminal defendant may have access to government records as a member of the public, the access is not based on that person’s status

as a criminal defendant. Accordingly, there was no basis for making a governmental unit's compliance with the Open Records Act, O.C.G.A. § 50-18-70, a prerequisite to the success of the state's prosecution of this defendant for speeding. *Stone v. State*, 257 Ga. App. 492, 571 S.E.2d 488 (2002).

Police reports concerning rape were public records obtainable by a student newspaper; the reports were not exempt under O.C.G.A. § 50-18-72 since the reports were not the subject of a pending investigation and involved a matter which had been terminated. *Doe v. Board of Regents*, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

Under a strict construction of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and because no active or ongoing investigation in a 1992 rape and murder case was shown, the trial court erred in granting a county summary judgment in support of the county's refusal to provide the newspaper access to the relevant police records in that case as no legitimate and valid reason was presented denying that the newspaper was entitled to disclosure of the records the county maintained; moreover, there were no suspects or evidence that would likely lead to identifying a suspect, and there was only a slight possibility that the county's submission of the DNA to a database would ever result in progress in solving the case. *Athens Newspapers, LLC v. Unified Gov't*, 284 Ga. App. 465, 643 S.E.2d 774 (2007), aff'd in part, rev'd in part, 284 Ga. 192, 663 S.E.2d 248 (2008).

Applicability of rape victim confidentiality statute. — A campus newspaper was entitled to university police reports concerning an incident of alleged rape but, in accordance with the rape victim confidentiality statute, O.C.G.A. § 16-6-23, with the victim's name and identifying information redacted. *Doe v. Board of Regents*, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

Confidential tax information not disclosable. — Confidential tax information in an investigative file of the Attorney General was not subject to disclosure under O.C.G.A. § 50-18-70. *Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995).

Agreement not to use requested information. — If the requesting party signs a statement agreeing not to use the requested information for commercial purposes, there is no basis under O.C.G.A. § 50-18-70 to

deny access to the records. *Clayton County Hosp. Auth. v. Webb*, 208 Ga. App. 91, 430 S.E.2d 89 (1993).

Testimony given at public inquest. — When a coroner, who is a public official, makes an inquest and opens it to the public, and the testimony given at the public inquest is recorded and transcribed at public expense, the coroner has waived any right to contend that the transcript is not a public record. *R.W. Page Corp. v. Kilgore*, 257 Ga. 179, 356 S.E.2d 870 (1987).

Sealed election record not open record subject to disclosure. — Because the superior court had not ordered that its seal be lifted under O.C.G.A. § 21-2-500(a), a CD-ROM containing election information was by law prohibited or specifically exempted from being open to inspection by the general public and thus was not an open record subject to disclosure under O.C.G.A. § 50-18-70(b). *Smith v. DeKalb County*, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, 2007 Ga. LEXIS 861 (Ga. 2007); *U.S.*, 128 S. Ct. 1882, 170 L. Ed. 2d 757 (2008).

Balancing of Interests

Judicial determination of necessity for inspection. — When a controversy arises between a citizen and a public official, the judiciary has the rather important duty of determining whether inspection or noninspection of the public records is in the public interest; the judiciary must balance the interest of the public in favor of inspection against the interest of the public in favor of noninspection in deciding this issue. *Athens Observer, Inc. v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980); *Atchison v. Hospital Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980).

Trial court must weigh factors for and against inspection. — In determining whether allowing members of the public to inspect records would be in the public interest, the trial court must weigh factors militating in favor of inspection (i.e., the interest of the citizens in knowing what their government officials are doing) against factors militating against inspection (i.e., whether this would unduly disrupt the state activity involved). In this regard, the court must weigh benefits accruing to the government from nondisclosure against the harm which may

Balancing of Interests (Cont'd)

result to the public if such records are not made available for inspection. *Northside Realty Assocs. v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978).

Court need not review disclosed records.

— There is nothing in the Open Records Act, O.C.G.A. § 50-18-70 et seq., which imposes a duty on the trial court to make a supervisory review of records disclosed under that Act. *Trammel v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991).

Degree of citizens' right to inspection of all public records. — Judiciary must balance the interest of the public in favor of inspection against the interest of the public in favor of noninspection in deciding whether inspection or noninspection of the public records is in the public interest. *Northside Realty Assocs. v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978).

Burden shifts to defendant to show reasons for nondisclosure. — Where it was found that plaintiff (citizen) had made a request for identifiable public records within defendant's (police department's) possession, the burden was cast on defendant to explain why the records should not be furnished. *Brown v. Minter*, 243 Ga. 397, 254 S.E.2d 326, cert. denied, 444 U.S. 844, 100 S. Ct. 88, 62 L. Ed. 2d 57 (1979).

Special or personal interest not required.

— Under O.C.G.A. § 50-18-70, a citizen seeking an opportunity to copy and inspect a public record need not show any special or personal interest therein. *Northside Realty Assocs. v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978).

Courts are not authorized to deny members of the public requests to inspect documents merely because those making requests have no special or personal interest in the documents. *Northside Realty Assocs. v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978).

Disclosure of county hospital employees' occupational information. — Disclosure of the names, salaries, and job titles of county hospital employees is not an invasion of personal privacy as contemplated by the General Assembly to permit an exemption from disclosure, nor is the public interest in

disclosure outweighed by benefits to the hospital accruing from nondisclosure. *Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 311 S.E.2d 806 (1984).

Effect of employment at nonresident corporation. — Neither this section nor any other provision of the law disqualifies a citizen of this state from exercising rights under that section because the citizen happens to be an employee of a nonresident corporation and may share the information received with the citizen's employer. *Atchison v. Hospital Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980).

Access required. — Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Exceptions

Exceptions generally. — Exceptions permitted under O.C.G.A. § 50-18-70 include disclosure of information regarding on-going investigations, the names of informants, and in exceptional and necessarily limited cases, the names of complainants. *Brown v. Minter*, 243 Ga. 397, 254 S.E.2d 326, cert. denied, 444 U.S. 844, 100 S. Ct. 88, 62 L. Ed. 2d 57 (1979).

Records not in existence. — Trial court properly held that a CD-ROM that contained passwords, encryption codes, and other security information would compromise election security and thus was exempt from disclosure under O.C.G.A. § 50-18-72(a)(15)(A)(iv). Although the requestor argued that the state could copy the CD-ROM without including such information, O.C.G.A. § 50-18-70(d) provided that an agency was not required to create records that were not in existence at the time of the request. *Smith v. DeKalb County*, 288 Ga.

App. 574, 654 S.E.2d 469 (2007), cert. denied, 2007 Ga. LEXIS 861 (Ga. 2007); U.S. , 128 S. Ct. 1882, 170 L. Ed. 2d 757 (2008).

Records not open for public inspection. — Public records that are prepared and maintained in a current and continuing investigation of possible criminal activity should not be open for public inspection. *Houston v. Rutledge*, 237 Ga. 764, 229 S.E.2d 624 (1976).

Personnel records. — Mere placement of records of Georgia Bureau of Investigation's investigation in the personnel file of an investigated public employee did not transform the records into personnel-related records. *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 316 S.E.2d 449 (1984).

Clinical records. — The disclosure provisions of O.C.G.A. § 50-18-70(b) do not apply to clinical records as defined by O.C.G.A. § 37-3-1(2). *Southeastern Legal Found., Inc. v. Ledbetter*, 260 Ga. 803, 400 S.E.2d 630 (1991).

Mental health records of a person who allegedly shot a number of people in a shopping mall were "clinical records" within the meaning of O.C.G.A. § 37-3-1(2), and therefore not subject to inspection under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Southeastern Legal Found., Inc. v. Ledbetter*, 260 Ga. 803, 400 S.E.2d 630 (1991).

Medical review committee findings provided for in O.C.G.A. § 31-7-143, in the control of any government agency, is not subject to inspection or release under the provisions of O.C.G.A. § 50-18-70 and any such material should be redacted from any reports which the agency is otherwise required to make available for inspection or release to the public. *Emory Univ. Hosp. v. Sweeney*, 220 Ga. App. 502, 469 S.E.2d 772 (1996).

Trade secrets. — Where a company made reasonable efforts to restrict the dissemina-

tion of trade secret information except for providing it to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, trade secret status was not lost simply because the company did not notify the EPD each time that it provided them with information containing trade secrets. *Theragenics Corp. v. Georgia Dep't of Natural Res.*, 244 Ga. App. 829, 536 S.E.2d 613 (2000), aff'd, *Georgia Dep't of Natural Resources v. Theragenics Corp.*, 273 Ga. 724, 545 S.E.2d 904 (2001).

Given the highly competitive nature of the asphalt industry in the State of Georgia, the trial court did not err in permanently enjoining the DOT from giving unredacted copies of documents, which contained trade secrets and confidential technical specifications relating to the mix design, to a competitor of a group of contractors; further, the public could ascertain whether a contractor's asphalt product met DOT requirements by examining information on the forms, which was not included in the trial court's injunction, and the records did not fall within the exception to Open Records Act disclosure because the contractors were not required by law to submit the information to the DOT. *Douglas Asphalt Co. v. E. R. Snell Contr., Inc.*, 282 Ga. App. 546, 639 S.E.2d 372 (2006), cert. denied, 2007 Ga. LEXIS 140 (2007).

Applicable exception not shown. — Trial court properly granted summary judgment to the corporation, as the individual did not show that an exception applied to the corporation's request that the individual disclose the individual's tax records to the corporation for the limited purpose of determining whether the city properly awarded the individual a city contract following the individual's certification as a disadvantaged business pursuant to a federal program. *City of Atlanta v. Corey Entm't, Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004).

OPINIONS OF THE ATTORNEY GENERAL

"Public record" defined. — A public record is one made by a public officer in pursuance of a duty, the immediate purpose of which is to disseminate information to the public or to serve as a memorial of official

transactions for public reference. 1971 Op. Att'y Gen. No. U71-9.

Aspect which makes documents subject to public scrutiny. — Mere fact that a document is deposited or filed in a public office,

or with a public officer, or is in the custody of a public officer, does not make the document a public record; the crucial aspect which makes applications and related materials subject to public scrutiny is the necessity for a board to keep these documents in the discharge of a board's proper duty. 1976 Op. Att'y Gen. No. 76-126.

Georgia courts have adopted a balancing test in construing O.C.G.A. § 50-18-70. 1981 Op. Att'y Gen. No. U81-47.

Use of term "law" in O.C.G.A. § 50-18-70 likely encompasses agency rules and regulations. 1981 Op. Att'y Gen. No. 81-50.

Files inspectable only if they meet definition in § 50-14-1(b). — Unless files reflecting board-initiated investigation meet definition of Ga. L. 1980, pp. 1254 and 1255 (see O.C.G.A. § 50-14-1(b)), citizen does not have a right to inspect such a file as a public record. 1980 Op. Att'y Gen. No. 80-84.

Subpoena not required for inspection or copying. — Citizen requesting to inspect and copy public records subject to the Open Records Act cannot be required to first obtain a subpoena. 1980 Op. Att'y Gen. No. 80-105.

Requests for computer-generated information. — Information does not fall outside the scope of the Open Records Act, O.C.G.A. § 50-18-70 et seq., because it is stored by means of magnetic tape or diskette rather than in a more traditional form. Where the requested information can be retrieved by a minimal computer search, an agency must comply. The parameters of the Open Records Act, O.C.G.A. § 50-18-70 et seq., cannot be altered by contract and any such provisions are unenforceable. 1989 Op. Att'y Gen. 89-32.

Grand jury lists are public records. — Under former Code 1933, § 89-601 (see O.C.G.A. § 45-6-6), grand jury lists are public records and as such are matters which are open to inspection by citizens at a reasonable time and place; any citizen, even a newspaper publisher, may copy grand jury lists and also publish the lists in a newspaper, if the citizen so desires. 1967 Op. Att'y Gen. No. 67-371.

Suits on account, notes, mortgage foreclosures, and garnishments were "public records" since they were required by law to be kept, as well as within former Code 1933, § 89-601 (see O.C.G.A. § 45-6-6), since they

were contained in books kept by a public officer under the laws of Georgia. Therefore, as public records these matters should be open to inspection by citizens at a reasonable time and place. 1967 Op. Att'y Gen. No. 67-340.

Section 8 housing documents. — Documents pertaining to inspection of Section 8 housing are subject to open records requests. 1991 Op. Att'y Gen. No. 91-33.

Investigative report may be withheld from inspection. — Police officer's investigative report prepared for submission to the officer's superiors is not a record which must be available for inspection or copying. 1975 Op. Att'y Gen. No. U75-92.

Personnel records of local board need not be available for public inspection. — This section does not require personnel records of a local board of education to be made available to the general public for inspection or copying, and should the board so desire, local school boards may lawfully maintain a policy of confidentiality concerning such files. 1977 Op. Att'y Gen. No. 77-56.

Personnel records of employees of university system are state records within meaning of this section. 1965-66 Op. Att'y Gen. No. 66-88.

State employees accept conditions imposed by law of salary disclosure. — As for those employees who might not desire to have salary information disclosed, in accepting employment by the state, the employees necessarily accepted the conditions imposed by law upon that employment. 1965-66 Op. Att'y Gen. No. 66-88.

Daily records, diaries, summaries, and computation sheets are not subject to inspection or copying under this section; the Department of Transportation may deny requests to examine or copy such papers. 1973 Op. Att'y Gen. No. 73-55.

Trade secrets and other confidential business information. — Trade secrets and other confidential business information received by the state energy office from the federal government and businesses in the private sector are not within the purview of this section, and may be treated as confidential by that state agency. 1974 Op. Att'y Gen. No. U74-113.

No duty for board to initiate furnishing of public records. — Open Records Law provides for inspection and copying of public

records by citizens, but does not require the Department of Education to itself prepare and furnish copies of public records to interested persons. 1976 Op. Att'y Gen. No. U76-43.

No absolute right of parent to inspect child's records. — This section is generally interpreted to intend that records kept on behalf of the public shall be open and that those kept for the benefit of an individual shall not. Common sense and good judgment should prevail, but there is no absolute legal right on the part of a parent to inspect a minor child's school records. 1972 Op. Att'y Gen. No. U72-74.

Records available to nonresidents. — Records should be made available for inspection upon request by any nonresident of Georgia unless disclosure is prohibited by court order or otherwise exempted by law. 1993 Op. Att'y Gen. No. 93-27.

Records of justice of peace are open. — Records in the office of the justice of the peace are public records of a court and are open for inspection by the general public, including a notary public, ex officio justice of the peace. 1962 Op. Att'y Gen. p. 101.

Licensure applications are public records. — Licensure applications submitted to the State Board of Registration of Used Car Dealers and their necessary parts are public records and, therefore, applications and related material become state records open to public scrutiny when they are received by the board; financial statements submitted are a necessary part of this application and are, therefore, open for public inspection, and it would not be permissible for the board to return the financial statements to the applicant without subjecting them to public scrutiny. 1976 Op. Att'y Gen. No. 76-126.

Licensure of nursing home programs is subject to the Open Records Law. 1965-66 Op. Att'y Gen. No. 65-93.

No disclosure of information from records by telephone. — Records may be made available for inspection by members of the public who might come in and make a request, but no such information is to be given by telephone. 1965-66 Op. Att'y Gen. No. 66-88.

Access to information on electors. — The names, addresses, and zip codes of electors must be furnished upon request for the fees set forth in O.C.G.A. § 21-2-234. Any addi-

tional identifying information as may be collected and maintained must also be made available for inspection and copying and a reasonable fee may be charged for expenses incurred for copies furnished. 1984 Op. Att'y Gen. No. 84-39.

Inmate records. — O.C.G.A. § 50-18-70 does not mandate that inmate records are to be open for public inspection since Department of Offender Rehabilitation (now Department of Corrections) rules and regulations, which have force and effect of law, require that inmate records not be open for public inspection. 1981 Op. Att'y Gen. No. 81-50.

Department of Offender Rehabilitation (now Department of Corrections) may properly release to Social Security Administration (SSA) inmate records necessary to enable SSA to perform its statutory duties; so long as information released is necessary for SSA to carry out its statutorily prescribed duties, the department will not be liable for invasion of an inmate's privacy. 1981 Op. Att'y Gen. No. 81-50.

Contents of personnel files not ordinarily available. — Writings of sort traditionally found in personnel files, as well as such related writings as interoffice communications concerning performance of a specific employee, would not ordinarily be available to the general public by virtue of O.C.G.A. § 50-18-70. 1981 Op. Att'y Gen. No. 81-71.

Disclosure of medical payments. — Department of Medical Assistance (now Department of Community Health) must disclose maximum payments available to providers under the various reimbursement schedules. 1980 Op. Att'y Gen. No. 80-50.

Criminal history confidential. — Information obtained pursuant to criminal history background check under O.C.G.A. § 16-11-129 is confidential. Information obtained pursuant to criminal history background check, required by O.C.G.A. § 16-11-129, from taking of fingerprints and checking of these fingerprints with those presently on file with Georgia Crime Information Center is of a confidential nature and prohibited from public disclosure. 1981 Op. Att'y Gen. No. U81-47.

Revolver permits. — Only names of persons issued permits to carry revolvers and date of issuance are matters of public record. 1981 Op. Att'y Gen. No. U81-47.

Utility accounts of a municipality are not exempt from disclosure under Open Records Law, O.C.G.A. § 50-18-70 et seq. 1982 Op. Att'y Gen. No. U82-36.

Utility billing and payment records of public officials. — Billing and payment records of public employees and officials to a municipally owned and operated public utility system are subject to disclosure, barring the proper application of any exception. 2000 Op. Att'y Gen. No. 2000-4.

Alcohol beverage invoices submitted for tax purposes. — Invoices reflecting sales of alcohol beverages by wholesalers to local retailers furnished to a local governing authority for the purpose of computing local alcohol excise tax are public records under O.C.G.A. § 50-18-70 and should be disclosed. 1985 Op. Att'y Gen. No. U85-44.

Copying copyrighted records on file. — Copying of copyrighted manuals, rates, and rules which must be filed with the insurance commissioner would not constitute an unfair use and hence would not amount to an infringement but, to the contrary, would constitute a fair use within the purpose for which the filing was made with the commissioner. 1965-66 Op. Att'y Gen. No. 66-178.

Notices of plant closings received from private employers by the Georgia Department of Labor pursuant to the "Worker Adjustment and Retraining Notification Act" are subject to public disclosure under the Georgia Open Records Law, O.C.G.A. § 50-18-70 et seq. 1989 Op. Att'y Gen. 89-38.

Official's personal storage of tax records. — It is not proper for county tax commissioner to store tax records in the commissioner's home. 1975 Op. Att'y Gen. No. U75-75.

Members of the General Assembly have no greater right than any other citizen to inspect records deemed confidential under the Open Records Act, O.C.G.A. § 50-18-70 et seq. 1988 Op. Att'y Gen. No. U88-33.

Distribution of decisions of Office of State Administrative Hearings. — Decisions of the Office of State Administrative Hearings are public records subject to distribution unless the decisions contain information subject to a confidentiality provision. 1999 Op. Att'y Gen. No. 99-13.

Workers' compensation records. — All records of the State Board of Workers' Compensation pertaining to accidents, injuries,

and settlements are confidential, unless a party can meet the statutory requirements for access or has authority pursuant to the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq. 1991 Op. Att'y Gen. No. 91-5.

Records of the State Board of Workers' Compensation Fraud and Compliance Division are subject to disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., except where such disclosure is exempted by the Act, prohibited by law, or prohibited by court order. 1997 Op. Att'y Gen. No. 97-20.

Job training bid documents. — Documents used in the competitive bidding process under the federal Job Training Partnership Act of 1982 are subject to the Open Records Act, O.C.G.A. § 50-18-70 et seq. 1991 Op. Att'y Gen. No. 91-11.

Salary and expense information of non-profit contractors receiving "arts grants" funds through the Office of Planning and Budget based upon the recommendation of the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att'y Gen. No. 95-31.

Contracts with federal agencies. — Agencies covered by the Georgia Open Records Act may not by contract with a federal agency create an exception to the Act and make otherwise public documents in the hands of the agency confidential unless the contract provision is mandated by federal law or regulation. 2005 Op. Att'y Gen. No. U2005-1.

Death certificates. — The federal Health Insurance Portability and Accountability Act (42 U.S.C.A. § 1320d) does not prevent the release of information on copies of death certificates about the cause of death of an individual, as well as conditions leading to the person's death and information regarding surgical proceedings conducted on the deceased, if any, that are released under the Georgia Open Records Act. 2007 Op. Att'y Gen. No. 2007-4.

Access to information in Registration and Title Information System. — The Department of Revenue is authorized to provide access to the information contained in the Georgia Registration and Title Information System only for the purposes mandated by the Driver's Privacy Protection Act of 1994, 18 U.S.C. §§ 2721—2725, or to those state

agencies designated in O.C.G.A. §§ 33-34-9, 40-2-130(c), and 40-3-23(d). 2008 Op. Att'y Gen. No. 2008-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 17, 22, 26 et seq.

Am. Jur. Trials. — Litigation Under the Freedom of Information Act, 50 Am. Jur. Trials 407.

C.J.S. — 76 C.J.S., Records, § 43 et seq.

ALR. — Right to examine records or documents of municipality relating to public utility conducted by it, 102 ALR 756.

Enforceability by mandamus of right to inspect public records, 169 ALR 653.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

Restricting access to records of disciplinary proceedings against attorneys, 83 ALR3d 749.

Discovery or inspection of state bar records of complaints against or investigations of attorneys, 83 ALR3d 777.

Restricting access to judicial records of concluded adoption proceedings, 83 ALR3d 800.

Accused's right to discovery or inspection of "rap sheets" or similar police records about prosecution witnesses, 95 ALR3d 832.

What constitutes preliminary drafts or notes provided by or for state or local governmental agency, or intra-agency memo-

randums, exempt from disclosure or inspection under state freedom of information acts, 26 ALR4th 639.

Patient's right to disclosure of his or her own medical records under state freedom of information act, 26 ALR4th 701.

What are "records" of agency which must be made available under state freedom of information act, 27 ALR4th 680.

What constitutes an agency subject to application of state freedom of information act, 27 ALR4th 742.

What constitutes "trade secrets" exempt from disclosure under state freedom of information act, 27 ALR4th 773.

State freedom of information act requests: right to receive information in particular medium or format, 86 ALR4th 786.

Propriety of publishing identity of sexual assault victim, 40 ALR5th 787.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 ALR Fed. 571.

Actions brought under Freedom of Information Act, 5 U.S.C.A. § 522 et seq. — Supreme Court cases, 167 ALR Fed. 545.

What constitutes "agency" for purposes of Freedom of Information Act (5 U.S.C.A § 552), 165 ALR Fed. 591.

50-18-71. Right of access to make photographs or reproductions.

(a) In all cases where an interested member of the public has a right to inspect or take extracts or make copies from any public records, instruments, or documents, any such person shall have the right of access to the records, documents, or instruments for the purpose of making photographs or reproductions of the same while in the possession, custody, and control of the lawful custodian thereof, or his authorized deputy. Such work shall be done under the supervision of the lawful custodian of the records, who shall have the right to adopt and enforce reasonable rules governing the work. The work shall be done in the room where the records, documents, or instruments are kept by law. While the work is in progress, the custodian may charge the person making the photographs or reproductions of the records, documents, or instruments at a rate of compensation to be agreed upon by the person making the photographs and the custodian for his services or the services of a deputy in supervising the work.

(b) Where fees for certified copies or other copies or records are specifically authorized or otherwise prescribed by law, such specific fee shall apply.

(c) Where no fee is otherwise provided by law, the agency may charge and collect a uniform copying fee not to exceed 25¢ per page.

(d) In addition, a reasonable charge may be collected for search, retrieval, and other direct administrative costs for complying with a request under this Code section. The hourly charge shall not exceed the salary of the lowest paid full-time employee who, in the discretion of the custodian of the records, has the necessary skill and training to perform the request; provided, however, that no charge shall be made for the first quarter hour.

(e) An agency shall utilize the most economical means available for providing copies of public records.

(f) Where information requested is maintained by computer, an agency may charge the public its actual cost of a computer disk or tape onto which the information is transferred and may charge for the administrative time involved as set forth in subsection (d) of this Code section.

(g) Whenever any person has requested one or more copies of a public record and such person does not pay the copying charges and charges for search, retrieval, or other direct administrative costs in accordance with the provisions of this Code section:

(1) A county or a department, agency, board, bureau, commission, authority, or similar body of a county is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;

(2) A municipal corporation or a department, agency, board, bureau, commission, authority, or similar body of a municipal corporation is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation;

(3) A consolidated government or a department, agency, board, bureau, commission, authority, or similar body of a consolidated government is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the consolidated government;

(4) A county school board or a department, agency, board, bureau, commission, authority, or similar body of a county school board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county;

(5) An independent school board or a department, agency, board, bureau, commission, authority, or similar body of an independent school

board is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation; and

(6) A joint or regional authority or instrumentality which serves one or more counties and one or more municipal corporations, two or more counties, or two or more municipal corporations is authorized to collect such charges in any manner authorized by law for the collection of taxes, fees, or assessments owed to the county if a county is involved with the authority or instrumentality or in any manner authorized by law for the collection of taxes, fees, or assessments owed to the municipal corporation if a municipal corporation is involved with the authority or instrumentality.

This subsection shall apply whether or not the person requesting the copies has appeared to receive the copies. (Ga. L. 1959, p. 88, § 2; Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 2; Ga. L. 1992, p. 1061, § 6; Ga. L. 1996, p. 313, § 1.)

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

Intent of General Assembly was to afford to public at large access to public records with the exceptions of certain information which is exempt from disclosure. *Griffin-Spalding County Hosp. Auth. v. Radio Station WKEU*, 240 Ga. 444, 241 S.E.2d 196 (1978).

Reasonable access to files. — A custodian of public records complies with an open records request when the custodian grants reasonable access to the files in custody; the custodian is not required to comb through the files and locate, inspect, and produce the documents sought. *Felker v. Lukemire*, 267 Ga. 296, 477 S.E.2d 23 (1996).

Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. *Wallace v.*

Greene County, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Consideration of cost of disclosing information. — Case was remanded for further determination of the most economical cost for providing information, since the record did not establish that the county used the most economical means for providing copies of at least part of the information requested. *Trammel v. Martin*, 200 Ga. App. 435, 408 S.E.2d 477 (1991).

Fees. — The imposition of a fee is allowed only when the citizen seeking access requests copies of documents or requests action by the custodian that involves an unusual administrative cost or burden. Thus, a fee may not be imposed under O.C.G.A. § 50-18-71 when a citizen seeks only to inspect records that are routinely subject to public inspection such as deeds, city ordinances, or zoning maps. *McFrugal Rental of Riverdale, Inc. v. Garr*, 262 Ga. 369, 418 S.E.2d 60 (1992).

O.C.G.A. § 15-6-96 prevails over O.C.G.A. § 50-18-71 and any other part of the Open Records Act, O.C.G.A. § 50-18-70 et seq., to the extent they conflict with the ability of superior court clerks to contract to market records of their offices for profit. *Powell v.*

VonCanon, 219 Ga. App. 840, 467 S.E.2d 193 (1996).

County tax commissioner, tax assessor, and commissioner could charge no more than the actual cost of a computer disk or tape and an hourly charge for administrative costs of no more than the salary of the lowest paid full-time employee who could perform the request for information on public real estate records. *Powell v. VonCanon*, 219 Ga. App. 840, 467 S.E.2d 193 (1996).

Indigents. — There is no provision in O.C.G.A. § 50-18-71 for the excusal of the payment of fees upon filing a pauper's affidavit. *McBride v. Wetherington*, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

Cited in *Northside Realty Assocs. v. Community Relations Comm'n*, 240 Ga. 432, 241 S.E.2d 189 (1978); *Atchison v. Hospital Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980).

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Requests for computer-generated information. — Information does not fall outside the scope of the Open Records Act, O.C.G.A. § 50-18-70 et seq., because the information is stored by means of magnetic tape or diskette rather than in more traditional form. Where the requested information can be retrieved by a minimal computer search, an agency must comply. The parameters of the Open Records Act cannot be altered by contract and any such provisions are unenforceable. 1989 Op. Att'y Gen. 89-32.

Prison inmate's medical records. — Department of Offender Rehabilitation (now Department of Corrections) may supply copies of a former inmate's prison medical records to a person other than an inmate who is neither a doctor nor the agent of a hospital. As a condition precedent to delivery of such records, however, the department should demand proof of the request-

ing party's authority and might also condition delivery upon tender of payment sufficient to cover the department's expenses in copying the material requested. 1973 Op. Att'y Gen. No. 73-77.

No obligation for board of regents. — Neither board of regents nor any of its member institutions is under any obligation under O.C.G.A. § 50-18-71 to make or furnish copies of any public record to a person requesting the records; the board and member institutions may prepare and furnish copies to requesting parties free or for a fee, if they want to. 1981 Op. Att'y Gen. No. 81-71.

No disclosure of information from records by telephone. — Records may be made available for inspection by members of the public who might come in and make a request, but no such information is to be given by telephone. 1965-66 Op. Att'y Gen. No. 66-88.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 19, 20.

C.J.S. — 76 C.J.S., Records, §§ 43, 46.

50-18-71.1. Approval of judge required for inspection of trial exhibits; reproduction of exhibits; public inspection.

(a) Notwithstanding any other provision of this article, an exhibit tendered to the court as evidence in a criminal or civil trial shall not be open to public inspection without approval of the judge assigned to the case or, if no judge has been assigned, approval of the chief judge or, if no judge has been designated chief judge, approval of the judge most senior in length of service on the court.

(b) Except as provided in subsection (d) of this Code section, in the event inspection is not approved by the court, in lieu of inspection of such an exhibit, the custodian of such an exhibit shall, upon request, provide one or more of the following representations of the exhibit:

- (1) A photograph;
- (2) A photocopy;
- (3) A facsimile; or
- (4) Another reproduction.

(c) The provisions of subsections (b), (c), (d), and (e) of Code Section 50-18-71 shall apply to fees, costs, and charges for providing a photocopy of such an exhibit. Fees for providing a photograph, facsimile, or other reproduction of such an exhibit shall not exceed the cost of materials or supplies and a reasonable charge for time spent producing the photograph, facsimile, or other reproduction, in accordance with subsections (d) and (e) of Code Section 50-18-71.

(d) Any physical evidence that is evidence of a violation of Part 2 of Article 3 of Chapter 12 of Title 16, that is used as an exhibit in a criminal or civil trial, shall not be open to public inspection except as provided in subsection (a) of this Code section. If the judge approves inspection of such physical evidence, the judge shall designate, in writing, the location where such physical evidence may be inspected, which location shall be in a facility owned or operated by an agency of state or local government. If the judge permits inspection, such property or material shall not be photographed, copied, or reproduced by any means. Any person who violates the provisions of this subsection shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one nor more than 20 years and by a fine of not more than \$100,000.00, or both. (Code 1981, § 50-18-71.1, enacted by Ga. L. 1992, p. 1061, § 7; Ga. L. 2008, p. 829, § 3/HB 1020.)

The 2008 amendment, effective July 1, 2008, in subsection (b), in the introductory language, substituted "Except as provided in subsection (d) of this Code section, in" for "In" at the beginning; and added subsection (d).

Cross references. — Civil action based upon evidence seized in criminal proceeding, § 9-11-34.1.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

50-18-71.2. Estimate of copying fees as condition for assessment.

Any agency receiving a request for public records shall be required to notify the party making the request of the estimated cost of the copying, search, retrieval, and other administrative fees authorized by Code Section 50-18-71 as a condition of compliance with the provisions of this article prior to fulfilling the request as a condition for the assessment of any fee;

provided, however, that no new fees other than those directly attributable to providing access shall be assessed where records are made available by electronic means. (Code 1981, § 50-18-71.2, enacted by Ga. L. 1996, p. 313, § 2; Ga. L. 1999, p. 552, § 3.)

50-18-72. When public disclosure not required; disclosure of exempting legal authority.

(a) Public disclosure shall not be required for records that are:

(1) Specifically required by federal statute or regulation to be kept confidential;

(2) Medical or veterinary records and similar files, the disclosure of which would be an invasion of personal privacy;

(3) Except as otherwise provided by law, records compiled for law enforcement or prosecution purposes to the extent that production of such records would disclose the identity of a confidential source, disclose confidential investigative or prosecution material which would endanger the life or physical safety of any person or persons, or disclose the existence of a confidential surveillance or investigation;

(4) Records of law enforcement, prosecution, or regulatory agencies in any pending investigation or prosecution of criminal or unlawful activity, other than initial police arrest reports and initial incident reports; provided, however, that an investigation or prosecution shall no longer be deemed to be pending when all direct litigation involving said investigation and prosecution has become final or otherwise terminated;

(4.1) Individual Georgia Uniform Motor Vehicle Accident Reports, except upon the submission of a written statement of need by the requesting party, such statement to be provided to the custodian of records and to set forth the need for the report pursuant to this Code section; provided, however, that any person or entity whose name or identifying information is contained in a Georgia Uniform Motor Vehicle Accident Report shall be entitled, either personally or through a lawyer or other representative, to receive a copy of such report; and provided, further, that Georgia Uniform Motor Vehicle Accident Reports shall not be available in bulk for inspection or copying by any person absent a written statement showing the need for each such report pursuant to the requirements of this Code section. For the purposes of this subsection, the term "need" means that the natural person or legal entity who is requesting in person or by representative to inspect or copy the Georgia Uniform Motor Vehicle Accident Report:

(A) Has a personal, professional, or business connection with a party to the accident;

(B) Owns or leases an interest in property allegedly or actually damaged in the accident;

(C) Was allegedly or actually injured by the accident;

(D) Was a witness to the accident;

(E) Is the actual or alleged insurer of a party to the accident or of property actually or allegedly damaged by the accident;

(F) Is a prosecutor or a publicly employed law enforcement officer;

(G) Is alleged to be liable to another party as a result of the accident;

(H) Is an attorney stating that he or she needs the requested reports as part of a criminal case, or an investigation of a potential claim involving contentions that a roadway, railroad crossing, or intersection is unsafe;

(I) Is gathering information as a representative of a news media organization;

(J) Is conducting research in the public interest for such purposes as accident prevention, prevention of injuries or damages in accidents, determination of fault in an accident or accidents, or other similar purposes; provided, however, this subparagraph will apply only to accident reports on accidents that occurred more than 30 days prior to the request and which shall have the name, street address, telephone number, and driver's license number redacted; or

(K) Is a governmental official, entity, or agency, or an authorized agent thereof, requesting reports for the purpose of carrying out governmental functions or legitimate governmental duties;

(5) Records that consist of confidential evaluations submitted to, or examinations prepared by, a governmental agency and prepared in connection with the appointment or hiring of a public officer or employee; and records consisting of material obtained in investigations related to the suspension, firing, or investigation of complaints against public officers or employees until ten days after the same has been presented to the agency or an officer for action or the investigation is otherwise concluded or terminated, provided that this paragraph shall not be interpreted to make such investigatory records privileged;

(6)(A) Real estate appraisals, engineering or feasibility estimates, or other records made for or by the state or a local agency relative to the acquisition of real property until such time as the property has been acquired or the proposed transaction has been terminated or abandoned; and

(B) Engineers' cost estimates and pending, rejected, or deferred bids or proposals until such time as the final award of the contract is

made or the project is terminated or abandoned. The provisions of this subparagraph shall apply whether the bid or proposal is received or prepared by the Department of Transportation pursuant to Article 4 of Chapter 2 of Title 32, by a county pursuant to Article 3 of Chapter 4 of Title 32, by a municipality pursuant to Article 4 of Chapter 4 of Title 32, or by a governmental entity pursuant to Article 2 of Chapter 91 of Title 36;

(7) Notwithstanding any other provision of this article, an agency shall not be required to release those portions of records which would identify persons applying for or under consideration for employment or appointment as executive head of an agency as that term is defined in paragraph (1) of subsection (a) of Code Section 50-14-1, or of a unit of the University System of Georgia; provided, however, that at least 14 calendar days prior to the meeting at which final action or vote is to be taken on the position, the agency shall release all documents which came into its possession with respect to as many as three persons under consideration whom the agency has determined to be the best qualified for the position and from among whom the agency intends to fill the position. Prior to the release of these documents, an agency may allow such a person to decline being considered further for the position rather than have documents pertaining to the person released. In that event, the agency shall release the documents of the next most qualified person under consideration who does not decline the position. If an agency has conducted its hiring or appointment process open to the public, it shall not be required to delay 14 days to take final action on the position. The agency shall not be required to release such records with respect to other applicants or persons under consideration, except at the request of any such person. Upon request, the hiring agency shall furnish the number of applicants and the composition of the list by such factors as race and sex. The agency shall not be allowed to avoid the provisions of this paragraph by the employment of a private person or agency to assist with the search or application process;

(8) Related to the provision of staff services to individual members of the General Assembly by the Legislative and Congressional Reapportionment Office, the Senate Research Office, or the House Research Office, provided that this exception shall not have any application with respect to records related to the provision of staff services to any committee or subcommittee or to any records which are or have been previously publicly disclosed by or pursuant to the direction of an individual member of the General Assembly;

(9) Records that are of historical research value which are given or sold to public archival institutions, public libraries, or libraries of a unit of the Board of Regents of the University System of Georgia when the owner or donor of such records wishes to place restrictions on access to

the records. No restriction on access, however, may extend more than 75 years from the date of donation or sale. This exemption shall not apply to any records prepared in the course of the operation of state or local governments of the State of Georgia;

(10) Records that contain information from the Department of Natural Resources inventory and register relating to the location and character of a historic property or of historic properties as those terms are defined in Code Sections 12-3-50.1 and 12-3-50.2 if the Department of Natural Resources through its Division of Historic Preservation determines that disclosure will create a substantial risk of harm, theft, or destruction to the property or properties or the area or place where the property or properties are located;

(10.1) Records of farm water use by individual farms as determined by water-measuring devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that compilations of such records for the 52 large watershed basins as identified by the eight-digit United States Geologic Survey hydrologic code or an aquifer that do not reveal farm water use by individual farms shall be subject to disclosure under this article;

(10.2) Agricultural or food system records, data, or information that are considered by the Georgia Department of Agriculture to be a part of the critical infrastructure, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "critical infrastructure" shall have the same meaning as in 42 U.S.C. Section 5195c(e). Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(10.3) Records, data, or information collected, recorded, or otherwise obtained that is deemed confidential by the Georgia Department of Agriculture for the purposes of the national animal identification system, provided that nothing in this paragraph shall prevent the release of such records, data, or information to another state or federal agency if the release of such records, data, or information is necessary to prevent or control disease or to protect public health, safety, or welfare. As used in this paragraph, the term "national animal identification program" means a national program intended to identify animals and track them as they come into contact with or commingle with animals other than herdsmates from their premises of origin. Such records, data, or information shall be subject to disclosure only upon the order of a court of competent jurisdiction;

(11) Records that contain site specific information regarding the occurrence of rare species of plants or animals or the location of sensitive

natural habitats on public or private property if the Department of Natural Resources determines that disclosure will create a substantial risk of harm, theft, or destruction to the species or habitats or the area or place where the species or habitats are located; provided, however, that the owner or owners of private property upon which rare species of plants or animals occur or upon which sensitive natural habitats are located shall be entitled to such information pursuant to this article;

(11.1) An individual's social security number and insurance or medical information in personnel records, which may be redacted from such records;

(11.2) Records that would reveal the names, home addresses, telephone numbers, security codes, e-mail addresses, or any other data or information developed, collected, or received by counties or municipalities in connection with neighborhood watch or public safety notification programs or with the installation, servicing, maintaining, operating, selling, or leasing of burglar alarm systems, fire alarm systems, or other electronic security systems; provided, however, that initial police reports and initial incident reports shall remain subject to disclosure pursuant to paragraph (4) of this subsection;

(11.3)(A) An individual's social security number, mother's birth name, credit card information, debit card information, bank account information, account number, including a utility account number, password used to access his or her account, financial data or information, and insurance or medical information in all records, and if technically feasible at reasonable cost, day and month of birth, which shall be redacted prior to disclosure of any record requested pursuant to this article; provided, however, that such information shall not be redacted from such records if the person or entity requesting such records requests such information in a writing signed under oath by such person or a person legally authorized to represent such entity which states that such person or entity is gathering information as a representative of a news media organization for use in connection with news gathering and reporting; and provided, further, that such access shall be limited to social security numbers and day and month of birth; and provided, further, that this news media organization exception for access to social security numbers and day and month of birth and the other protected information set forth in this subparagraph shall not apply to teachers, employees of a public school, or public employees as set forth in paragraph (13.1) of this subsection. For purposes of this subparagraph, the term "public employee" means any nonelected employee of the State of Georgia or its agencies, departments, or commissions or any county or municipality or its agencies, departments, or commissions.

(B) This paragraph shall have no application to:

(i) The disclosure of information contained in the records or papers of any court or derived therefrom including without limitation records maintained pursuant to Article 9 of Title 11;

(ii) The disclosure of information to a court, prosecutor, or publicly employed law enforcement officer, or authorized agent thereof, seeking records in an official capacity;

(iii) The disclosure of information to a public employee of this state, its political subdivisions, or the United States who is obtaining such information for administrative purposes, in which case, subject to applicable laws of the United States, further access to such information shall continue to be subject to the provisions of this paragraph;

(iv) The disclosure of information as authorized by the order of a court of competent jurisdiction upon good cause shown to have access to any or all of such information upon such conditions as may be set forth in such order;

(v) The disclosure of information to the individual in respect of whom such information is maintained, with the authorization thereof, or to an authorized agent thereof; provided, however, that the agency maintaining such information shall require proper identification of such individual or such individual's agent, or proof of authorization, as determined by such agency;

(vi) The disclosure of the day and month of birth and mother's birth name of a deceased individual;

(vii) The disclosure by an agency of credit or payment information in connection with a request by a consumer reporting agency as that term is defined under the federal Fair Credit Reporting Act (15 U.S.C. Section 1681, et seq.);

(viii) The disclosure by an agency of information in its records in connection with the agency's discharging or fulfilling of its duties and responsibilities, including, but not limited to, the collection of debts owed to the agency or individuals or entities whom the agency assists in the collection of debts owed to the individual or entity;

(ix) The disclosure of information necessary to comply with legal or regulatory requirements or for legitimate law enforcement purposes; or

(x) The disclosure of the date of birth within criminal records.

(C) Records and information disseminated pursuant to this paragraph may be used only by the authorized recipient and only for the

authorized purpose. Any person who obtains records or information pursuant to the provisions of this paragraph and knowingly and willfully discloses, distributes, or sells such records or information to an unauthorized recipient or for an unauthorized purpose shall be guilty of a misdemeanor of a high and aggravated nature and upon conviction thereof shall be punished as provided in Code Section 17-10-4. Any person injured thereby shall have a cause of action for invasion of privacy. Any prosecution pursuant to this paragraph shall be in accordance with the procedure in subsection (b) of Code Section 50-18-74.

(D) In the event that the custodian of public records protected by this paragraph has good faith reason to believe that a pending request for such records has been made fraudulently, under false pretenses, or by means of false swearing, such custodian shall apply to the superior court of the county in which such records are maintained for a protective order limiting or prohibiting access to such records.

(E) This paragraph shall supplement and shall not supplant, overrule, replace, or otherwise modify or supersede any provision of statute, regulation, or law of the federal government or of this state as now or hereafter amended or enacted requiring, restricting, or prohibiting access to the information identified in subparagraph (A) of this paragraph and shall constitute only a regulation of the methods of such access where not otherwise provided for, restricted, or prohibited;

(12) Public records containing information that would disclose or might lead to the disclosure of any component in the process used to execute or adopt an electronic signature, if such disclosure would or might cause the electronic signature to cease being under the sole control of the person using it. For purposes of this paragraph, the term "electronic signature" has the same meaning as that term is defined in Code Section 10-12-2;

(13) Records that would reveal the home address or telephone number, social security number, or insurance or medical information of employees of the Department of Revenue, law enforcement officers, firefighters as defined in Code Section 25-4-2, judges, emergency medical technicians and paramedics, scientists employed by the Division of Forensic Sciences of the Georgia Bureau of Investigation, correctional employees, and prosecutors or identification of immediate family members or dependents thereof;

(13.1) Records that reveal the home address, the home telephone number, or the social security number of or insurance or medical information about public employees or teachers and employees of a public school. For the purposes of this paragraph, the term "public school" means any school which is conducted within this state and which

is under the authority and supervision of a duly elected county or independent board of education;

(13.2) Records that are kept by the probate court pertaining to guardianships and conservatorships except as provided in Code Section 29-9-18;

(14) Acquired by an agency for the purpose of establishing or implementing, or assisting in the establishment or implementation of, a carpooling or ridesharing program, to the extent such records would reveal the name, home address, employment address, home telephone number, employment telephone number, or hours of employment of any individual or would otherwise identify any individual who is participating in, or who has expressed an interest in participating in, any such program. As used in this paragraph, the term "carpooling or ridesharing program" means and includes, but is not limited to, the formation of carpools, vanpools, or buspools, the provision of transit routes, rideshare research, and the development of other demand management strategies such as variable working hours and telecommuting;

(15)(A) Records, the disclosure of which would compromise security against sabotage or criminal or terrorist acts and the nondisclosure of which is necessary for the protection of life, safety, or public property, which shall be limited to the following:

(i) Security plans and vulnerability assessments for any public utility, technology infrastructure, building, facility, function, or activity in effect at the time of the request for disclosure or pertaining to a plan or assessment in effect at such time;

(ii) Any plan for protection against terrorist or other attacks, which plan depends for its effectiveness in whole or in part upon a lack of general public knowledge of its details;

(iii) Any document relating to the existence, nature, location, or function of security devices designed to protect against terrorist or other attacks, which devices depend for their effectiveness in whole or in part upon a lack of general public knowledge; and

(iv) Any plan, blueprint, or other material which if made public could compromise security against sabotage, criminal, or terroristic acts.

(B) In the event of litigation challenging nondisclosure pursuant to this paragraph by an agency of a document covered by this paragraph, the court may review the documents in question in camera and may condition, in writing, any disclosure upon such measures as the court may find to be necessary to protect against endangerment of life, safety, or public property.

(C) As used in divisions (i) and (iv) of subparagraph (A) of this paragraph, the term "activity" means deployment or surveillance strategies, actions mandated by changes in the federal threat level, motorcades, contingency plans, proposed or alternative motorcade routes, executive and dignitary protection, planned responses to criminal or terrorist actions, after-action reports still in use, proposed or actual plans and responses to bioterrorism, and proposed or actual plans and responses to requesting and receiving the National Pharmacy Stockpile;

(16) Unless the request is made by the accused in a criminal case or by his or her attorney, public records of an emergency 9-1-1 system, as defined in paragraph (3) of Code Section 46-5-122, containing information which would reveal the name, address, or telephone number of a person placing a call to a public safety answering point, which information may be redacted from such records if necessary to prevent the disclosure of the identity of a confidential source, to prevent disclosure of material which would endanger the life or physical safety of any person or persons, or to prevent the disclosure of the existence of a confidential surveillance or investigation;

(17) Records of athletic or recreational programs, available through the state or a political subdivision of the state, that include information identifying a child or children 12 years of age or under by name, address, telephone number, or emergency contact, unless such identifying information has been redacted;

(18) Records of the State Road and Tollway Authority which would reveal the financial accounts or travel history of any individual who is a motorist upon such toll project. Such financial records shall include but not be limited to social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;

(19) Records maintained by public postsecondary educational institutions in this state and associated foundations of such institutions that contain personal information concerning donors or potential donors to such institutions or foundations; provided, however, that the name of any donor and the amount of donation made by such donor shall be subject to disclosure if such donor or any entity in which such donor has a substantial interest transacts business with the public postsecondary educational institution to which the donation is made within three years of the date of such donation. As used in this paragraph, the term "transact business" means to sell or lease any personal property, real property, or services on behalf of oneself or on behalf of any third party as an agent, broker, dealer, or representative in an amount in excess of \$10,000.00 in the aggregate in a calendar year and the term "substantial interest" means the direct or indirect ownership of more than 25 percent of the assets or stock of an entity;

(20) Records of the Metropolitan Atlanta Rapid Transit Authority or of any other transit system that is connected to that system's TransCard or SmartCard system which would reveal the financial records or travel history of any individual who is a purchaser of a TransCard or SmartCard or similar fare medium. Such financial records shall include, but not be limited to, social security number, home address, home telephone number, e-mail address, credit or debit card information, and bank account information but shall not include the user's name;

(21) Building mapping information produced and maintained pursuant to Article 10 of Chapter 3 of Title 38; or

(22) Notwithstanding the provisions of paragraph (4) of this subsection, any physical evidence or investigatory materials that are evidence of an alleged violation of Part 2 of Article 3 of Chapter 12 of Title 16, which are in the possession, custody, or control of law enforcement, prosecution, or regulatory agencies.

(b) This article shall not be applicable to:

(1) Any trade secrets obtained from a person or business entity which are of a privileged or confidential nature and required by law to be submitted to a government agency or to data, records, or information of a proprietary nature, produced or collected by or for faculty or staff of state institutions of higher learning, or other governmental agencies, in the conduct of or as a result of, study or research on commercial, scientific, technical, or scholarly issues, whether sponsored by the institution alone or in conjunction with a governmental body or private concern, where such data, records, or information has not been publicly released, published, copyrighted, or patented;

(2) Any data, records, or information developed, collected, or received by or on behalf of faculty, staff, employees, or students of an institution of higher education or any public or private entity supporting or participating in the activities of an institution of higher education in the conduct of, or as a result of, study or research on medical, scientific, technical, scholarly, or artistic issues, whether sponsored by the institution alone or in conjunction with a governmental body or private entity until such information is published, patented, otherwise publicly disseminated, or released to an agency whereupon the request must be made to the agency. This subsection applies to, but is not limited to, information provided by participants in research, research notes and data, discoveries, research projects, methodologies, protocols, and creative works; or

(3) Unless otherwise provided by law, contract, bid, or proposal, records consisting of questions, scoring keys, and other materials, constituting a test that derives value from being unknown to the test taker prior to administration, which is to be administered by the State Board of Education, the Office of Student Achievement, or a local school system,

if reasonable measures are taken by the owner of the test to protect security and confidentiality; provided, however, that the State Board of Education may establish procedures whereby a person may view, but not copy, such records if viewing will not, in the judgment of the board, affect the result of administration of such test.

These limitations shall not be interpreted by any court of law to include or otherwise exempt from inspection the records of any athletic association or other nonprofit entity promoting intercollegiate athletics.

(c)(1) All public records of hospital authorities shall be subject to this article except for those otherwise excepted by this article or any other provision of law.

(2) All state officers and employees shall have a privilege to refuse to disclose the identity or personally identifiable information of any person participating in research on commercial, scientific, technical, medical, scholarly, or artistic issues conducted by the Department of Community Health or a state institution of higher education whether sponsored by the institution alone or in conjunction with a governmental body or private entity. Personally identifiable information shall mean any information which if disclosed might reasonably reveal the identity of such person including but not limited to the person's name, address, and social security number. The identity of such informant shall not be admissible in evidence in any court of the state unless the court finds that the identity of the informant already has been disclosed otherwise.

(d) This article shall not be applicable to any application submitted to or any permanent records maintained by a judge of the probate court pursuant to Code Section 16-11-129, relating to licenses to carry pistols or revolvers, or pursuant to any other requirement for maintaining records relative to the possession of firearms. This subsection shall not preclude law enforcement agencies from obtaining records relating to licensing and possession of firearms as provided by law.

(e) This article shall not be construed to repeal:

(1) The attorney-client privilege recognized by state law to the extent that a record pertains to the requesting or giving of legal advice or the disclosure of facts concerning or pertaining to pending or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought or to be brought by or against the agency or any officer or employee; provided, however, attorney-client information may be obtained in a proceeding under Code Section 50-18-73 to prove justification or lack thereof in refusing disclosure of documents under this Code section provided the judge of the court in which said proceeding is pending shall first determine by an in camera examination that such disclosure would be relevant on that issue;

(2) The confidentiality of attorney work product; or

(3) State laws making certain tax matters confidential.

(f)(1) As used in this article, the term:

(A) “Computer program” means a set of instructions, statements, or related data that, in actual or modified form, is capable of causing a computer or computer system to perform specified functions.

(B) “Computer software” means one or more computer programs, existing in any form, or any associated operational procedures, manuals, or other documentation.

(2) This article shall not be applicable to any computer program or computer software used or maintained in the course of operation of a public office or agency.

(g) This Code section shall be interpreted narrowly so as to exclude from disclosure only that portion of a public record to which an exclusion is directly applicable. It shall be the duty of the agency having custody of a record to provide all other portions of a record for public inspection or copying.

(h) Within the three business days applicable to response to a request for access to records under this article, the public officer or agency having control of such record or records, if access to such record or records is denied in whole or in part, shall specify in writing the specific legal authority exempting such record or records from disclosure, by Code section, subsection, and paragraph. No addition to or amendment of such designation shall be permitted thereafter or in any proceeding to enforce the terms of this article; provided, however, that such designation may be amended or supplemented one time within five days of discovery of an error in such designation or within five days of the institution of an action to enforce this article, whichever is sooner; provided, further, that the right to amend or supplement based upon discovery of an error may be exercised on only one occasion. In the event that such designation includes provisions not relevant to the subject matter of the request, costs and reasonable attorney’s fees may be awarded pursuant to Code Section 50-18-73. (Ga. L. 1967, p. 455, § 1; Ga. L. 1970, p. 163, § 1; Code 1981, § 50-18-72, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1986, p. 1090, § 2; Ga. L. 1987, p. 377, § 1; Ga. L. 1988, p. 13, § 50; Ga. L. 1988, p. 243, § 3; Ga. L. 1989, p. 553, § 2; Ga. L. 1989, p. 827, § 1; Ga. L. 1990, p. 341, § 1; Ga. L. 1992, p. 1061, § 8; Ga. L. 1993, p. 968, § 1; Ga. L. 1993, p. 1336, § 1; Ga. L. 1993, p. 1669, § 1; Ga. L. 1995, p. 704, § 1; Ga. L. 1996, p. 6, § 50; Ga. L. 1997, p. 1052, § 2; Ga. L. 1998, p. 1652, § 1; Ga. L. 1999, p. 552, §§ 4, 4.1; Ga. L. 1999, p. 809, §§ 4, 5; Ga. L. 1999, p. 1222, §§ 1, 2; Ga. L. 2000, p. 136, § 50; Ga. L. 2000, p. 1556, §§ 1, 2; Ga. L. 2001, p. 4, § 50; Ga. L. 2001, p. 327, § 1; Ga. L. 2001, p. 331, § 1; Ga. L. 2001, p. 491, § 1; Ga. L. 2001, p. 820, § 13; Ga. L. 2002, p. 415, § 50; Ga. L. 2003, p. 602, § 1; Ga. L. 2003, p. 880, § 2; Ga. L. 2004, p. 107, § 22; Ga. L. 2004, p. 161, § 15; Ga. L. 2004, p. 341, § 1A;

Ga. L. 2004, p. 410, § 9; Ga. L. 2004, p. 770, § 1; Ga. L. 2005, p. 334, § 30-2/HB 501; Ga. L. 2005, p. 558, § 1/HB 437; Ga. L. 2005, p. 595, § 1/SB 121; Ga. L. 2005, p. 660, § 11/HB 470; Ga. L. 2005, p. 1133, § 1/HB 340; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 536, § 1/HB 955; Ga. L. 2007, p. 87, § 1/SB 212; Ga. L. 2007, p. 160, § 1/HB 101; Ga. L. 2008, p. 564, § 2/SB 33; Ga. L. 2008, p. 829, § 4/HB 1020; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 37, §§ 1, 1.1, 1.2/SB 26; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2009, p. 698, § 7/HB 126.)

The 2007 amendments. — The first 2007 amendment, effective May 11, 2007, in subparagraph (a)(11.3)(A), substituted “teachers, employees of a public school, or public employees as set forth in paragraph (13.1) of this subsection” for “teachers and employees of a public school” at the end of the first sentence and added the second sentence. The second 2007 amendment, effective May 16, 2007, added paragraphs (a)(10.2) and (a)(10.3).

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, in paragraph (a)(19), deleted “or” at the end; in paragraph (a)(20), substituted “; or” for a period at the end; and added paragraph (a)(21). The second 2008 amendment, effective July 1, 2008, made identical changes.

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, substituted “Article 10” for “Article 9” in paragraph (a)(21). The second 2009 amendment, effective July 1, 2009, in paragraph (a)(1), substituted “federal statute or regulation” for “the federal government” in the middle; in paragraph (a)(11.2), inserted “e-mail addresses,” and inserted “with neighborhood watch or public safety notification programs or”; near the beginning of subparagraph (a)(11.3)(A), inserted “account number, including a utility account number, password used to access his or her account,”; in subparagraph (a)(11.3)(B), deleted “or” at the end of division (a)(11.3)(B)(vii), substituted “; or” for a period at the end of division (a)(11.3)(B)(ix), and added division (a)(11.3)(B)(x); and, in paragraph (a)(13), substituted “firefighters as defined in Code Section 25-4-2, judges, emergency medical technicians and paramedics,” for “judges,” in the middle. The third 2009 amendment, effective July 1, 2009, substituted “Depart-

ment of Community Health” for “Department of Human Resources” in the first sentence of paragraph (c)(2). The fourth 2009 amendment, effective July 1, 2009, substituted “Code Section 10-12-2” for “Code Section 10-12-3” at the end of the last sentence of paragraph (a)(12).

Cross references. — Privilege from testifying generally, § 24-9-20 et seq. Confidentiality of records of medical peer review groups, § 31-7-133. Confidentiality of portions of license applications directed to joint-secretary, § 43-1-2(k).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was substituted for a semicolon following “concluded or terminated” in paragraph (a)(5).

Pursuant to Code Section 28-9-5, in 1993, a comma was added following “scholarly” in the first sentence of paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 1995, “Division of Historic Preservation” was substituted for “Historic Preservation Section” in paragraph (a)(10).

Pursuant to Code Section 28-9-5, in 1999, in subsection (a), a comma was inserted in two places in the introductory paragraph of paragraph (4.1) and punctuation was revised at the end of subparagraph (a)(4.1)(J).

Pursuant to Code Section 28-9-5, in 2001, a comma was inserted following “15 U.S.C. 1681” in division (a)(11.3)(B)(vii), a semicolon was substituted for a period at the end of subparagraph (a)(11.3)(E), a semicolon was substituted for “; or” at the end of paragraph (a)(13), and “; or” was substituted for a period at the end of paragraph (a)(13.1).

Pursuant to Code Section 28-9-5, in 2003, paragraph (a)(15), as enacted by Ga. L. 2003, p. 602, § 1, was redesignated as paragraph (a)(16), “or” at the end of paragraph (a)(14) was deleted, and “; or” was substituted for a period at the end of paragraph (a)(15).

Pursuant to Code Section 28-9-5, in 2004, “or” was deleted from the end of paragraph (a)(13.2).

Pursuant to Code Section 28-9-5, in 2005, “or” was deleted at the end of paragraph (a)(17), “; or” was substituted for a period at the end of paragraph (a)(18), and paragraph (a)(18), as enacted by Ga. L. 2005, p. 1133, § 1, was redesignated as paragraph (a)(19).

Pursuant to Code Section 28-9-5, in 2006, a comma was deleted following “limited to” in paragraph (a)(18).

Pursuant to Code Section 28-9-5, in 2007, a misspelling of the word “infrastructure” was corrected in the next to the last sentence of paragraph (a)(10.2).

Pursuant to Code Section 28-9-5, in 2008, paragraph (a)(21), as enacted by Ga. L. 2008, p. 829, § 4, was redesignated as paragraph (a)(22); “or” was deleted at the end of paragraph (a)(20); and “; or” was substituted for a period at the end of paragraph (a)(21).

Editor’s notes. — Ga. L. 1999, p. 809, § 1, not codified by the General Assembly, provides that the social security numbers on driver’s licenses and other pertinent personal identifying information appearing on Georgia Uniform Motor Vehicle Accident Reports is often used for fraudulent purposes and for invading the privacy of individuals; therefore, access to the Georgia Uniform Motor Vehicle Accident Reports should be restricted.

Ga. L. 1999, p. 1222 and Ga. L. 1999, p. 552 both amended this Code section by adding new paragraph (a)(11.1). However, the paragraph (11.1) added by Ga. L. 1999,

p. 1222 supersedes Ga. L. 1999, p. 552. This Code section, as set out above, contains the paragraph (a)(11.1) as added by Ga. L. 1999, p. 1222.

Ga. L. 2004, p. 410, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘State and Local Tax Revision Act of 2004.’”

Ga. L. 2004, p. 161, § 16, not codified by the General Assembly, provides that “all appointments of guardians of the person or property made pursuant to former Title 29 shall continue in effect and shall thereafter be governed by the provisions of this Act.”

Ga. L. 2005, p. 595, § 2, not codified by the General Assembly, makes paragraph (a)(18) of this Code section applicable to all requests for copies of records or to inspect records filed or submitted on or after May 2, 2005, and that are pending on May 2, 2005.

Law reviews. — For article commenting on the 1997 amendment of this Code section, see 14 Ga. L. Rev. 25 (1997). For survey article on local government law, see 59 Mercer L. Rev. 285 (2007). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007).

For note on 1989 amendment to this Code section, see 6 Ga. St. U.L. Rev. 324 (1989). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992). For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 316 (2000). For note on the 2001 amendment to this Code section, see 18 Ga. St. U. L. Rev. 328 (2001).

For comment, “Confidentiality and Dissemination of Personal Information: An Examination of State Laws Governing Data Protection,” see 41 Emory L.J. 1185 (1992).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION APPLICATION

General Consideration

Intent of General Assembly was to afford to public at large access to public records, with the exceptions of certain information which the law exempts from disclosure. *Griffin-Spalding County Hosp. Auth. v. Ra-*

dio Station WKEU, 240 Ga. 444, 241 S.E.2d 196 (1978).

This section manifests the intent of the General Assembly that reports which include the elements of the tort of invasion of privacy are to be exempted from the disclosure requirements of the law; the right of privacy,

General Consideration (Cont'd)

protectable in tort, however extends only to unnecessary public scrutiny. *Athens Observer, Inc. v. Anderson*, 245 Ga. 63, 263 S.E.2d 128 (1980).

Construction of statutory exemptions. — Any purported statutory exemption from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq., must be narrowly construed. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992); *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 447 S.E.2d 41 (1994).

Exemption for law enforcement records. — O.C.G.A. § 50-18-72(a)(4) exempts law enforcement records from disclosure to the extent the records are part of a pending investigation. A seemingly inactive investigation which has not yet resulted in a prosecution logically remains undecided, and is therefore “pending” until the investigation is concluded and the file closed. *Unified Gov’t v. Athens Newspapers, LLC*, 284 Ga. 192, 663 S.E.2d 248 (2008).

Failure to cite exemption. — Under the Open Records Act, O.C.G.A. § 50-18-70 et seq., a city could not rely on the exemption under O.C.G.A. § 50-18-72(a)(4) because the city had not cited the statute in a timely written response as required by § 50-18-72(h). The city’s response was untimely and not in writing, and in citing the statute in the city’s answer, the city failed to cite the subsection and paragraph relied upon. *Jaraysi v. City of Marietta*, 294 Ga. App. 6, 668 S.E.2d 446 (2008).

Time for responding to records request. — Under O.C.G.A. §§ 50-18-70(f) and 50-18-72(h), the three-day time period to respond to a records request commences upon delivery of the request to the agency, rather than the particular employee in charge of the records. *Unified Gov’t v. Athens Newspapers, LLC*, 284 Ga. 192, 663 S.E.2d 248 (2008).

When a city did not comply with the three-business-day time restriction for responding to an open records request, it violated the Open Records Act, O.C.G.A. § 50-18-70 et seq., even if it later made all of the requested documents available, and the trial court erred in granting summary judgment to the city. *Jaraysi v. City of Marietta*, 294 Ga. App. 6, 668 S.E.2d 446 (2008).

Inquiries under Open Records Act. — In suits under the Open Records Act, O.C.G.A. § 50-18-70 et seq., the first inquiry is whether the records are “public records”; if the records are, the second inquiry is whether the records are protected from disclosure under the list of exemptions or under any other statute; if the records are not exempt, then the question is whether the records should be protected by court order, but only if there is a claim that disclosure would invade individual privacy. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992).

As a police department’s investigation of an unsolved rape and murder remained “pending” under O.C.G.A. § 50-18-72(a)(4) until the file was closed, the county was not obliged to disclose records of the investigation to a newspaper under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. *Unified Gov’t v. Athens Newspapers, LLC*, 284 Ga. 192, 663 S.E.2d 248 (2008).

Records open to public inspection unless closed by specific exception. — The underlying implication of this section is that all records of all state, county, and municipal authorities are open to public inspection unless closed by a specific exception, and that the records of hospital authorities are not in any respect different from those of other authorities when the issue is one of whether the particular record is open to public inspection under the general provisions of this article or is closed to public inspection under a specific statutory exception. *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119, appeal dismissed and cert. denied, 446 U.S. 979, 100 S. Ct. 2958, 64 L. Ed. 2d 836 (1980).

Trial court properly granted summary judgment to the corporation on the corporation’s request that the individual disclose to the corporation the individual’s tax records so that the corporation could evaluate whether the individual was properly awarded a city contract based on the city’s designation of the individual’s business as a disadvantaged business; the corporation sought the information for a legitimate, limited purpose and the individuals could not show a specific exception that would bar disclosure of those records. *City of Atlanta v. Corey Entm’t, Inc.*, 278 Ga. 474, 604 S.E.2d 140 (2004).

Agency limited to authority cited in denial of initial request. — Pursuant to O.C.G.A. § 50-18-72(h), in denying a request for records under the Open Records Act (ORA), an agency was allowed to rely only on the legal authority specified in a response denying an initial request, so an insurance commissioner was not allowed to deny an ORA request for records relating to an investigation of an insurer only on the insurer's proffered basis of the pendency of the investigation, and as the insurer had already been given the chance to review the report and resolve the matter, but later withdrew the insurer's request for a hearing, the commissioner's general policy of not releasing reports until the subject of the investigation had a chance to review the report and resolve the matter was unauthorized. *Hoffman v. Oxendine*, 268 Ga. App. 316, 601 S.E.2d 813 (2004).

Construed with 42 USC § 1395bb(a). — There is no requirement under O.C.G.A. § 50-18-72 that a report generated by or used by the state for state purposes be exempted from disclosure merely because that report would be kept confidential if generated or used by the federal government for federal purposes. *Georgia Hosp. Ass'n v. Ledbetter*, 260 Ga. 477, 396 S.E.2d 488 (1990).

Right to privacy determined by examining tort of invasion of privacy. — The invasion of personal privacy encompassed as an exception to the right of the public to access is to be determined by an examination of the tort of invasion of privacy. *Harris v. Cox Enters., Inc.*, 256 Ga. 299, 348 S.E.2d 448 (1986).

Limits of right of privacy. — The right of privacy does not prohibit the communication of any matter though of a private nature, when the publication is made under circumstances which would render it a privileged communication according to the law of libel and slander. *Dennis v. Adcock*, 138 Ga. App. 425, 226 S.E.2d 292 (1976).

Cited in Northside Realty Assocs. v. Community Relations Comm'n. 240 Ga. 432, 241 S.E.2d 189 (1978); *Atchison v. Hospital Auth.*, 245 Ga. 494, 265 S.E.2d 801 (1980); *City of Atlanta v. Pacific & S. Co.*, 257 Ga. 587, 361 S.E.2d 484 (1987); *McBride v. Wetherington*, 199 Ga. App. 7, 403 S.E.2d 873 (1991); *Bogle v. McClure*, 332 F.3d 1347

(11th Cir. 2003); *Walker v. Johnson*, 282 Ga. 168, 646 S.E.2d 44 (2007).

Application

Privacy rights of a private transportation company and school bus drivers could not outweigh the public interest in the disclosure of information in personnel records regarding the drivers. *Hackworth v. Board of Educ.*, 214 Ga. App. 17, 447 S.E.2d 78 (1994).

Confidential tax information not disclosable. — Confidential tax information in an investigative file of the Attorney General was not subject to disclosure under O.C.G.A. § 50-18-72. *Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995).

Election records. — The trial court properly held that a CD-ROM that contained passwords, encryption codes, and other security information would compromise election security and thus was exempt from disclosure under O.C.G.A. § 50-18-72(a)(15)(A)(iv). Although the requestor argued that the state could copy the CD-ROM without including such information, O.C.G.A. § 50-18-70(d) provided that an agency was not required to create records that were not in existence at the time of the request. *Smith v. DeKalb County*, 288 Ga. App. 574, 654 S.E.2d 469 (2007), cert. denied, 2007 Ga. LEXIS 861 (Ga. 2007);

U.S. , 128 S. Ct. 1882, 170 L. Ed. 2d 757 (2008).

Law enforcement records. — Incident reports of a city police department were exempt from disclosure under O.C.G.A. § 50-18-72(a)(3) to the extent the reports contained confidential information, even though the reports would not be exempted under O.C.G.A. § 50-18-72(a)(4) as not being part of a pending investigation or prosecution. *Atlanta Journal & Constitution v. City of Brunswick*, 265 Ga. 413, 457 S.E.2d 176 (1995).

In an action by newspapers for disclosure of certain incident reports of a city police department, it was not error to bar the newspapers from an ex parte hearing held to determine the extent to which the reports might contain confidential information that would be exempt from disclosure; affirming *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 447 S.E.2d 41 (1994). *Atlanta Journal & Constitution v.*

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City of Brunswick, 265 Ga. 413, 457 S.E.2d 176 (1995).

Incident reports maintained by a city on a series of sexual assaults could be exempted from disclosure if disclosure would reveal confidential information or endanger the lives of various individuals. *City of Brunswick v. Atlanta Journal & Constitution*, 214 Ga. App. 150, 447 S.E.2d 41 (1994), *aff'd*, 265 Ga. 413, 457 S.E.2d 176 (1995).

Police reports concerning rape were not protected by the "similar file" exemption of O.C.G.A. § 50-18-72(a)(2), because the documents were expressly governed by O.C.G.A. § 50-18-72(a)(4) and concerned a subject of "legitimate public inquiry." *Doe v. Board of Regents*, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

University police reports concerning incident of alleged rape were public records obtainable by a student newspaper; the reports were not exempt under O.C.G.A. § 50-18-72(a)(4), since the reports were not the subject of a pending investigation and involved a matter which had been terminated. *Doe v. Board of Regents*, 215 Ga. App. 684, 452 S.E.2d 776 (1994).

No first amendment right to accident reports. — Private investigator seeking information for commercial solicitation has no first amendment constitutional right of special access to motor vehicle accident reports. *Spottsville v. Barnes*, 135 F. Supp. 2d 1316 (N.D. Ga. 2001).

Use of medical records in relevant court proceedings. — Although unauthorized publicity of the contents of hospital records, a patient's health, patient's anatomical debilities, and the opinions, diagnoses, and tests of the patient's doctors would fall within the restriction of this section, the section does not preclude the use of the records in relevant court proceedings, nor does the section provide a basis for a tort action for invasion of privacy when such material is admitted into evidence. *Dennis v. Adcock*, 138 Ga. App. 425, 226 S.E.2d 292 (1976).

Discovery request of voir dire notes premature. — Defendant's petition for a writ of mandamus pursuant to the Open Records Act, O.C.G.A. § 50-18-70 et seq., seeking discovery of the district attorney's voir dire notes was premature as defendant still re-

tained the right to do so in a habeas proceeding. *Hall v. Madison*, 263 Ga. 73, 428 S.E.2d 345 (1993).

Private information protected. — Various factors weigh on the question of whether personal privacy protects information from disclosure. Among other things, the court should consider whether the information is unsubstantiated and based on hearsay, whether the information does not relate or relates only incidentally to the subject matter of the public record, and the remoteness in time of the events referred to. *Harris v. Cox Enters., Inc.*, 256 Ga. 299, 348 S.E.2d 448 (1986).

Eminent domain cases. — Property has been "acquired" for purposes of the exemption set forth in O.C.G.A. § 50-18-72(a)(6) only after condemnation proceedings, including any litigation, have been completed. Real estate appraisals obtained by the Department of Transportation were not subject to disclosure when only the declaration of taking was filed and money was paid into court. *Black v. Georgia DOT*, 262 Ga. 342, 417 S.E.2d 655 (1992).

Pending-prosecution exemption of O.C.G.A. § 50-18-72(a)(4) refers to imminent adjudicatory proceedings of finite duration. The last phrase of that exemption is but one example of when a prosecution should not be considered "pending" for purposes of the exception. *Parker v. Lee*, 259 Ga. 195, 378 S.E.2d 677 (1989).

Invasion of privacy rights of murder victims. — In determining whether an invasion of the privacy rights of murder victims is warranted or unwarranted, the question can be stated in terms of whether the privacy interests of the deceased are outweighed by the interests of the public favoring disclosure. *Napper v. Georgia Television Co.*, 257 Ga. 156, 356 S.E.2d 640 (1987).

"Investigative notes" not releasable. — "Investigative notes" are not within the category of law enforcement and prosecutorial documents authorized for release under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq.; investigative notes are "notes" not "reports," and cannot be classified as police arrest reports, accident reports, or incident reports. *Lebis v. State*, 212 Ga. App. 481, 442 S.E.2d 786 (1994).

Investigatory reports. — An investigatory report concerning claims of misconduct

against an employee of the State Board of Pardons and Paroles was a public record and was not exempt from disclosure under O.C.G.A. § 50-18-72. *Fincher v. State*, 231 Ga. App. 49, 497 S.E.2d 632 (1998).

Hospital authority claimed certain records of its internal investigation of alleged sexual misconduct by its employees were exempt from disclosure under the attorney work product doctrine, pursuant to O.C.G.A. § 50-18-72(e)(2) of the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq. This claim failed, as the investigation, despite the involvement of counsel for the authority, was commenced not in response to any claims or threat of litigation, but because the authority received anonymous complaints from its employees about inappropriate sexual activity. *Fulton DeKalb Hosp. Auth. v. Miller & Billips*, 293 Ga. App. 601, 667 S.E.2d 455 (2008).

Retrial possibility not grounds for nondisclosure of investigatory files. — When a murder conviction and death sentence resulting from the prosecution have been affirmed on appeal, but a rape conviction has been reversed on a ground that leaves the state free to retry the defendant, the possible retrial of the defendant does not warrant nondisclosure to defendant of criminal investigatory files since the agency custodians of the files at issue failed to carry the agency's burden of showing an imminent proceeding on the rape charge against defendant to exempt such files from disclosure pursuant to O.C.G.A. § 50-18-72(a)(4). *Parker v. Lee*, 259 Ga. 195, 378 S.E.2d 677 (1989).

Tenants' rights of privacy protected from disclosure of certain information. — O.C.G.A. § 50-18-72 forbids disclosure to the general public from housing authority records or files of any information which would invade the constitutional, statutory, or common-law rights of the tenants to privacy. *Doe v. Sears*, 245 Ga. 83, 263 S.E.2d 119, appeal dismissed and cert. denied, 446 U.S. 979, 100 S. Ct. 2958, 64 L. Ed. 2d 836 (1980).

Ad valorem property tax records not confidential. — Ad valorem property tax records are not similar to medical records for the purpose of O.C.G.A. § 50-18-72 and are not required to be kept confidential. *Pensyl v. Peach County*, 252 Ga. 450, 314 S.E.2d 434 (1984).

County hospital employees' information disclosure. — The disclosure of the names, salaries, and job titles of county hospital employees is not an invasion of personal privacy as contemplated by the General Assembly to permit an exemption from disclosure, nor is the public interest in disclosure outweighed by benefits to the hospital accruing from nondisclosure. *Richmond County Hosp. Auth. v. Southeastern Newspapers Corp.*, 252 Ga. 19, 311 S.E.2d 806 (1984).

Mere placement of records of Georgia Bureau of Investigation's investigation in the personnel file of an investigated public employee did not transform the records into personnel-related records. *Irvin v. Macon Tel. Publishing Co.*, 253 Ga. 43, 316 S.E.2d 449 (1984).

Records of Georgia DOT. — Neither the "state matter" privilege nor the "secret of state" privilege exempted cost estimates of the DOT from disclosure under the Open Records Act, O.C.G.A. § 50-18-70 et seq. *Hardaway Co. v. Rives*, 262 Ga. 631, 422 S.E.2d 854 (1992).

Applications for position of university president. — Applications submitted by candidates for the position of Georgia State University president, and the resumes and vitae, which were products of the applicants themselves, although those materials were materials upon which, in part, "confidential evaluations" were based, were not evaluations. Hence, those materials were not exempt from disclosure. *Board of Regents v. Atlanta Journal*, 259 Ga. 214, 378 S.E.2d 305 (1989).

Records containing city cellular telephone bills, including numbers assigned to city cellular telephones, were not exempt from disclosure under O.C.G.A. § 50-18-72(a)(2). *Dortch v. Atlanta Journal*, 261 Ga. 350, 405 S.E.2d 43 (1991).

Trade secrets. — After a company made reasonable efforts to restrict the dissemination of trade secret information except for providing the information to the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources, trade secret status was not lost simply because the company did not notify the EPD each time that the company provided EPD with information containing trade secrets. *Theragenics Corp. v. Georgia Dep't of Natural Res.*, 244 Ga. App. 829, 536 S.E.2d 613

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(2000), *aff'd.*, Georgia Dep't of Natural Resources v. Theragenics Corp., 273 Ga. 724, 545 S.E.2d 904 (2001).

Given the highly competitive nature of the asphalt industry in the State of Georgia, the trial court did not err in permanently enjoining the DOT from giving unredacted copies of documents, which contained trade secrets and confidential technical specifications relating to the mix design, to a competitor of a group of contractors; further, the public could ascertain whether a contractor's asphalt product met DOT requirements by examining information on the forms, which was not included in the trial court's injunction, and the records did not fall within the exception to Open Records Act, O.C.G.A. § 50-18-70 et seq., disclosure because the contractors were not required by law to submit the information to the DOT. *Douglas Asphalt Co. v. E. R. Snell Contr., Inc.*, 282 Ga. App. 546, 639 S.E.2d 372 (2006), cert. denied, 2007 Ga. LEXIS 140 (2007).

Trade secrets exemption of O.C.G.A. § 50-18-72(b)(1) means that public records are exempt from disclosure if the records constitute trade secrets, even if the records are submitted to a public agency, so long as the submission was "required by law"; under this construction, public records that remain in the sole possession of a private entity are exempt from disclosure if the records otherwise qualify as trade secrets under the two-part test set forth in O.C.G.A. § 10-1-761(4). As such, the trial court erred in concluding that documents of the administrator of the State Health Benefit Plan could not be exempt from disclosure because the documents were never "required by law to be submitted" to the Georgia Department of Community Health. *United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty.*

Health, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

By voluntarily entering into a public contract to administer public funds, the administrator of the State Health Benefit Plan did not waive the right to have the administrator's documents protected as trade secrets. A private entity's voluntary participation in a government contract did not, standing alone, strip the entity's documents of its trade secret status. *United HealthCare of Ga., Inc. v. Ga. Dep't of Cmty. Health*, 293 Ga. App. 84, 666 S.E.2d 472 (2008).

Attorney fees. — Trial court erred in entering summary judgment for a county and a county manager in an employee's suit for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. *Benefit Support, Inc. v. Hall County*, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, 2007 Ga. LEXIS 214 (Ga. 2007).

OPINIONS OF THE ATTORNEY GENERAL

Trade secrets and confidential business information. — Trade secrets and other confidential business information received by the state energy office from the federal government and businesses in the private sector are not within the purview of O.C.G.A. Art. 4, Ch. 18, T. 50, and may be

treated as confidential by that state agency. 1974 Op. Att'y Gen. No. U74-113.

Disclosure requirements applicable to state trade secrets. — Trade secrets of any state department, agency, board, bureau, commission or authority are not exempt from public disclosure under the Open

Records Act, O.C.G.A. § 50-18-70 et seq., although information in the possession of such entity which is a trade secret of others must be protected from disclosure. If it is not clear that the requested information constitutes a trade secret of another, the entity contending that the information is a trade secret may exercise the entity's rights to protect the information pursuant to O.C.G.A. § 10-1-762. 1994 Op. Att'y Gen. No. 94-15.

Former prison inmate's prison medical records. — Department of Offender Rehabilitation (now Corrections) may supply copies of former inmate's prison medical records to person other than an inmate who is neither a doctor nor the agent of a hospital. As a condition precedent to delivery of such records, however, the department should demand proof of the requesting party's authority and might also condition delivery upon tender of payment sufficient to cover the department's expenses in copying the material requested. 1973 Op. Att'y Gen. No. 73-77.

Reports prepared in evaluating disability claim. — If the medical board of the Employees' Retirement System determines that the examining physician has met the criteria of O.C.G.A. § 31-33-2(c) in recommending nondisclosure of medical records prepared in the evaluation of a claim for disability retirement benefits, it is appropriate to refuse copies of those reports to the applicant who was examined. 1992 Op. Att'y Gen. No. 92-19.

Department of Natural Resources' satellite imagery database. — The Department of Natural Resources is not required to provide public access to raw or unenhanced satellite data purchased from EOSAT (a firm that markets unenhanced satellite data), but it must provide public access to the enhanced database of satellite imagery. 1992 Op. Att'y Gen. No. 92-13.

Voter registration cards. — Construing former O.C.G.A. § 21-2-242 with O.C.G.A. §§ 21-2-217(a), 21-2-234, and 50-18-70 et seq., registration cards must be subject to disclosure in accordance with the provisions of the Open Records Act, O.C.G.A. § 50-18-70 et seq. However, in accordance with the federal Privacy Act of 1974, Section 7(b) (5 U.S.C. § 552 as note), if a registrar is going to require disclosure of a social secu-

rity number on a voter registration card, the individual registering to vote should be informed as to whether the disclosure is mandatory or voluntary, under what statutory authority the disclosure is requested, and the uses to which the disclosure will be put. 1990 Op. Att'y Gen. No. 90-5.

Social security number of a voter is required by O.C.G.A. § 21-2-217(a) to be recorded on a voter registration card, if the number is known at the time of application, and must be disclosed under an Open Records Act, O.C.G.A. § 50-18-70 et seq., request. 1990 Op. Att'y Gen. No. 90-5.

Voter's unlisted telephone number included on voter registration card. — Voter registrars have no authority to request the inclusion of a telephone number on a voter registration card, and in the absence of statutory authority either to require or to request that an elector provide a telephone number, whether listed or unlisted, for a voter registration card, the disclosure of an unlisted number pursuant to an Open Records Act, O.C.G.A. § 50-18-70 et seq., request may constitute an unwarranted invasion of privacy. Hence, a voter's unlisted telephone number should not be disclosed by voter registrars under an Open Records Act request. 1990 Op. Att'y Gen. No. 90-5.

Prerequisites to disclosure of information in medical files. — No information contained in confidential medical files should be released to a requesting party unless some prior assurance is given that the requesting party is either the subject of the file in question or that the requesting party has in fact been authorized by that person to receive the information which the requesting party seeks. 1973 Op. Att'y Gen. No. 73-77.

Subsequent Injury Trust Fund Board meetings. — The portion of Subsequent Injury Trust Fund Board meetings in which the medical and rehabilitation records of an individual are discussed are not subject to the Open Meetings Law, O.C.G.A. § 50-18-70 et seq. 1991 Op. Att'y Gen. No. 91-8.

Public project records exempt from disclosure. — When a public agency is assembling more than one parcel of real property for a public project, records relative to that "transaction" and "property" as a whole are exempt from disclosure under O.C.G.A.

§ 50-18-72(a)(6) until all the property to be acquired is acquired or is abandoned or terminated from the project. 1995 Op. Att'y Gen. No. 95-10.

Community development block grant program information. — Information provided to the Department of Community Affairs in connection with the community development block grant program is not exempt from disclosure under O.C.G.A. § 50-18-72 unless such information constitutes a trade secret. 1989 Op. Att'y Gen. 89-35.

Burden of explaining why public records not subject to disclosure. — If there is a

request for identifiable public records, the burden is cast upon the custodian of those records to explain why the records should not be disclosed. 1990 Op. Att'y Gen. No. 90-5.

Contracts with federal agencies. — Agencies covered by the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., may not by contract with a federal agency create an exception to the Act and make otherwise public documents in the hands of the agency confidential unless the contract provision is mandated by federal law or regulation. 2005 Op. Att'y Gen. No. U2005-1.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

When are government records "similar files" exempt from disclosure under Freedom of Information Act provision (5 USCS § 552(b)(6)) exempting certain personnel, medical, and "similar" files, 106 ALR Fed. 94.

What is agency subject to Privacy Act Provisions (5 USCA § 552a), 150 ALR Fed. 521.

What are "records" of agency which must be made available under Freedom of Information Act (5 USCA § 552(a)(3)), 153 ALR Fed. 571.

What are interagency or intra-agency memorandums or letters exempt from disclosure under the Freedom of Information Act (5 U.S.C.A. § 552(b)), 168 ALR Fed. 143.

What matters are exempt from disclosure under Freedom of Information Act (5 U.S.C.A. § 552(b)) as "specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy," 169 ALR Fed. 495.

What constitutes "confidential source" within Freedom of Information Act exemption permitting nondisclosure of confidential source and, in some instances, of information furnished by confidential source (5 U.S.C.A. § 552(b)), 171 ALR Fed. 193.

Construction and application of FOIA exemption 7(f), 5 U.S.C.A. § 552(b)(7)(F), which permits withholding of information compiled for law enforcement purposes if disclosure could reasonably be expected to endanger life or physical safety, 184 ALR Fed. 435.

Use of affidavits to substantiate federal agency's claim of exemption from request for documents under Freedom of Information Act (5 U.S.C.A. § 552), 187 ALR Fed. 1.

When are government records reasonably "expected to interfere with enforcement proceedings" so as to be exempt from disclosure under Freedom of Information Act provision (5 U.S.C.A. § 552(b)(7)(a)) exempting any information "compiled for law enforcement purposes" whenever it "could reasonably be expected to interfere with enforcement proceedings," 189 ALR Fed. 1.

50-18-73. Jurisdiction to enforce article; attorney's fees and litigation expenses; good faith reliance as defense to action.

(a) The superior courts of this state shall have jurisdiction in law and in equity to entertain actions against persons or agencies having custody of records open to the public under this article to enforce compliance with the provisions of this article. Such actions may be brought by any person, firm, corporation, or other entity. In addition, the Attorney General shall have

authority to bring such actions, either civil or criminal, in his or her discretion as may be appropriate to enforce compliance with this article.

(b) In any action brought to enforce the provisions of this chapter in which the court determines that either party acted without substantial justification either in not complying with this chapter or in instituting the litigation, the court shall, unless it finds that special circumstances exist, assess in favor of the complaining party reasonable attorney's fees and other litigation costs reasonably incurred. Whether the position of the complaining party was substantially justified shall be determined on the basis of the record as a whole which is made in the proceeding for which fees and other expenses are sought.

(c) Any agency or person who provides access to information in good faith reliance on the requirements of this chapter shall not be liable in any action on account of having provided access to such information. (Code 1981, § 50-18-73, enacted by Ga. L. 1982, p. 1789, § 1; Ga. L. 1988, p. 243, § 4; Ga. L. 1992, p. 1061, § 9; Ga. L. 1998, p. 595, § 2.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "it" was substituted for "if" in subsection (b).

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U. L. Rev. 242 (1998). For annual survey

of local government law, see 58 Mercer L. Rev. 267 (2006). For survey article on zoning and land use law, see 59 Mercer L. Rev. 493 (2007).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 344 (1992).

JUDICIAL DECISIONS

Actions to enjoin disclosure of information authorized. — Open Records Act, O.C.G.A. § 50-18-70 et seq., provides the jurisdictional basis for a cause of action by individuals to enjoin the disclosure of legally protected information. *Bowers v. Shelton*, 265 Ga. 247, 453 S.E.2d 741 (1995).

Trial court incorrectly held that counterclaim alleging violations of the Open Records Act, O.C.G.A. § 50-18-70 et seq., was based on the prayer for relief contained in the original complaint filed by a housing authority, and since the housing authority failed to show that the factual issues regarding the counterclaim must have been decided in the authority's favor, the trial court erred in granting summary judgment in favor of the housing authority on this claim. *Strange v. Hous. Auth. of Summerville*, 268 Ga. App. 403, 602 S.E.2d 185 (2004).

An award of attorney's fees is discretionary under O.C.G.A. § 50-18-73 and the decision of the superior court will be interfered with only if this discretion has been abused. *Richmond County Hosp. Auth. v.*

Southeastern Newspapers Corp., 252 Ga. 19, 311 S.E.2d 806 (1984); *GMS Air Conditioning, Inc. v. Department of Human Resources*, 201 Ga. App. 136, 410 S.E.2d 341 (1991).

Trial court erred in entering summary judgment for a county and a county manager in an employee's claim for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

Attorney's fees and costs award was proper. — Insofar as it found a violation of the Open Records Act, O.C.G.A. § 50-18-70 et seq., and the Open Meetings Act, O.C.G.A. § 50-14-1 et seq., and awarded

attorney's fees and costs pursuant to O.C.G.A. § 50-18-73(b), the trial court ruled correctly. *Decatur County v. Bainbridge Post Searchlight, Inc.*, 280 Ga. 706, 632 S.E.2d 113 (2006).

Abuse of discretion not found. — Trial court did not abuse the court's discretion in denying an individual's petition for mandamus, attorney's fees, and expenses under the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., as the individual sued without following-up with the city on the records request; the individual failed to show that the city acted without substantial justification in not complying with the Act as required by O.C.G.A. § 50-18-73(b). *Everett v. Rast*, 272 Ga. App. 636, 612 S.E.2d 925 (2005).

Compensatory and punitive damages unauthorized. — O.C.G.A. § 50-18-73 authorizes an award of attorney's fees and expenses of litigation in actions brought to enforce the statute only if the court determines that the action constituting a violation of the statute was completely without merit as to law or fact. Compensatory and/or punitive damages are not authorized. *McBride v. Wetherington*, 199 Ga. App. 7, 403 S.E.2d 873 (1991).

Mandamus. — Because O.C.G.A. § 50-18-73(a) of the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., provided a remedy that was as complete and convenient as mandamus, the trial court did not err in dismissing the individuals' O.C.G.A. § 9-6-27(b) petition for mandamus. *Tobin v. Cobb County Bd. of Educ.*, 278 Ga. 663, 604 S.E.2d 161 (2004).

Summary judgment properly denied. — County's summary judgment motion was properly denied as: (1) the county violated the Georgia Open Records Act, O.C.G.A. § 50-18-70 et seq., by failing to respond to a bidder's request within three business days; (2) the county did not produce any documents for over a month and did not provide all requested documents until after a civil suit for attorney's fees was filed; and (3) the county further failed to explain the county's dilatory conduct in any evidence submitted with the county's summary judgment motion. *Benefit Support, Inc. v. Hall County*, 281 Ga. App. 825, 637 S.E.2d 763 (2006), cert. denied, 2007 Ga. LEXIS 214 (Ga. 2007).

Cited in *Pensyl v. Peach County*, 252 Ga. 450, 314 S.E.2d 434 (1984).

RESEARCH REFERENCES

ALR. — Exhaustion of administrative remedies as prerequisite to judicial action to compel disclosure under state freedom of information acts, 114 ALR5th 283.

Construction and application of state freedom of information act provisions concern-

ing award of attorney's fees and other litigation costs, 118 ALR5th 1.

Allowance of punitive damages in state freedom of information actions, 13 ALR6th 721.

50-18-74. Penalty for violations; procedure for commencement of prosecution.

(a) Any person knowingly and willfully violating the provisions of this article by failing or refusing to provide access to records not subject to exemption from this article or by failing or refusing to provide access to such records within the time limits set forth in this article shall be guilty of a misdemeanor and upon conviction shall be punished by a fine not to exceed \$100.00.

(b) A prosecution under this Code section may only be commenced by issuance of a citation in the same manner as an arrest warrant for a peace officer pursuant to Code Section 17-4-40, which citation shall be personally served upon the accused. The defendant shall not be arrested prior to the

time of trial, except that a defendant who fails to appear for arraignment or trial may thereafter be arrested pursuant to a bench warrant and required to post a bond for his or her future appearance. (Code 1981, § 50-18-74, enacted by Ga. L. 1999, p. 552, § 5.)

Editor's notes. — The former Code section, relating to unlawful refusal to provide access to public records or to allow copying of such records, was based on Ga. L. 1982, p.

1789, § 1, and was repealed and reserved by Ga. L. 1992, p. 1061, § 10, effective April 6, 1992.

JUDICIAL DECISIONS

Attorney fees might be appropriate. — Trial court erred in entering summary judgment for a county and a county manager in an employee's claim for attorney fees arising out of a Georgia Open Records Act (ORA), O.C.G.A. § 50-18-70 et seq., request as the employee showed that the ORA was violated as the manager did not respond to the

request within the required three-day period; the case was remanded for a determination of whether the ORA violation was without substantial justification or whether special circumstances existed that counseled against awarding attorney fees. *Wallace v. Greene County*, 274 Ga. App. 776, 618 S.E.2d 642 (2005).

RESEARCH REFERENCES

ALR. — Allowance of punitive damages in state freedom of information actions, 13 ALR6th 721.

50-18-75. Confidentiality of communications between Office of Legislative Counsel and certain persons.

Communications between the Office of Legislative Counsel and the following persons shall be privileged and confidential: members of the General Assembly, the Lieutenant Governor, and persons acting on behalf of such public officers; and such communications, and records and work product relating to such communications, shall not be subject to inspection or disclosure under this article or any other law or under judicial process; provided, however, that this privilege shall not apply where it is waived by the affected public officer or officers. The privilege established under this Code section is in addition to any other constitutional, statutory, or common law privilege. (Code 1981, § 50-18-75, enacted by Ga. L. 1988, p. 243, § 5.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 32 et seq.

C.J.S. — 76 C.J.S., Records, § 44.

50-18-76. Written matter exempt from disclosure under Code Section 31-10-25.

No form, document, or other written matter which is required by law or rule or regulation to be filed as a vital record under the provisions of Chapter 10 of Title 31, which contains information which is exempt from disclosure under Code Section 31-10-25, and which is temporarily kept or maintained in any file or with any other documents in the office of the judge or clerk of any court prior to filing with the Department of Community Health shall be open to inspection by the general public, even though the other papers or documents in such file may be open to inspection. (Code 1981, § 50-18-76, enacted by Ga. L. 1991, p. 1943, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in this Code section.

Cross references. — Juvenile Court records, Uniform Rules for the Juvenile Courts of Georgia, Rule 3.1.

50-18-77. Inapplicable to public records.

The procedures and fees provided for in this article shall not apply to public records, including records that are exempt from disclosure pursuant to Code Section 50-18-72, which are requested in writing by a state or federal grand jury, taxing authority, law enforcement agency, or prosecuting attorney in conjunction with an ongoing administrative, criminal, or tax investigation. The lawful custodian shall provide copies of such records to the requesting agency unless such records are privileged or disclosure to such agencies is specifically restricted by law. (Code 1981, § 50-18-77, enacted by Ga. L. 1999, p. 809, § 6.)

Law reviews. — For note on 1999 enactment of this Code section, see 16 Ga. St. U.L. Rev. 268 (1999).

ARTICLE 5**STATE RECORDS MANAGEMENT****50-18-90. Short title.**

This article shall be known and may be cited as the "Georgia Records Act." (Ga. L. 1972, p. 1267, § 1.)

50-18-91. Definitions.

As used in this article, the term:

- (1) "Agency" means any state office, department, division, board,

bureau, commission, authority, or other separate unit of state government created or established by law.

(2) "Court record" means all documents, papers, letters, maps, books (except books formally organized in libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or, in the necessary performance of any judicial function, created or received by an official of the Supreme Court, Court of Appeals, and any superior, state, juvenile, probate, or magistrate court. "Court record" includes records of the offices of the judge, clerk, prosecuting attorney, public defender, court reporter, or any employee of the court.

(3) "Division" means the Division of Archives and History of the Office of the Secretary of State.

(4) "Georgia State Archives" means an establishment maintained by the division for the preservation of those records and other papers that have been determined by the division to have sufficient historical and other value to warrant their continued preservation by the state and that have been accepted by the division for deposit in its custody.

(5) "Records" means all documents, papers, letters, maps, books (except books in formally organized libraries), microfilm, magnetic tape, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in performance of functions by any agency.

(6) "Records center" means an establishment maintained by the division primarily for the storage, processing, servicing, and security of public records that must be retained for varying periods of time but need not be retained in an agency's office equipment or office space.

(7) "Record series" means documents or records having similar physical characteristics or relating to a similar function or activity that are filed in a unified arrangement.

(8) "Records management" means the application of management techniques to the creation, utilization, maintenance, retention, preservation, and disposal of records undertaken to reduce costs and improve efficiency of record keeping. "Records management" includes management of filing and microfilming equipment and supplies; filing and information retrieval systems; files, correspondence, reports, and forms management; historical documentation; micrographics; retention programming; and vital records protection.

(9) "Retention schedule" means a set of disposition instructions prescribing how long, where, and in what form a record series shall be kept.

(10) "Vital records" means any record vital to the resumption or continuation of operations, or both; to the re-creation of the legal and financial status of government in the state; or to the protection and fulfillment of obligations to citizens of the state. (Ga. L. 1972, p. 1267, § 2; Ga. L. 1973, p. 691, §§ 1, 2; Ga. L. 1975, p. 675, § 1; Ga. L. 1978, p. 1372, § 4; Ga. L. 1983, p. 884, § 4-1; Ga. L. 1984, p. 22, § 50; Ga. L. 2002, p. 532, § 23.)

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — An agency head has direct supervisory control over the agency records management officer, and, subject to the approval of the State Records

Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.

C.J.S. — 76 C.J.S., Records, § 1 et seq.

50-18-92. Creation of State Records Committee; membership; duties; retention schedules; appeal to committee by agency heads; court records.

(a) There is created the State Records Committee, to be composed of the Governor, the Secretary of State, an appointee of the Governor who is not the Attorney General, the state auditor, and an officer of a governing body, as such terms are defined in subsection (a) of Code Section 50-18-99, to be appointed by the Secretary of State, or their designated representatives. It shall be the duty of the committee to review, approve, disapprove, amend, or modify retention schedules submitted by agency heads, school boards, county governments, and municipal governments through the division for the disposition of records based on administrative, legal, fiscal, or historical values. The retention schedules, once approved, shall be authoritative, shall be directive, and shall have the force and effect of law. A retention schedule may be determined by three members of the committee. Retention schedules may be amended by the committee on change of program mission or legislative changes affecting the records. The Secretary of State shall serve as chairperson of the committee and shall schedule meetings of the committee as required. Three members shall constitute a quorum. Each agency head has the right of appeal to the committee for actions taken under this Code section.

(b) Each court of this state may recommend to the State Records Committee and the Administrative Office of the Courts retention schedules for records of that court. The committee, with the concurrence of the Administrative Office of the Courts, shall adopt retention schedules for court records of each court. The destruction of court records by retention

schedule shall not be construed as affecting the status of each court as a court of record. (Ga. L. 1972, p. 1267, § 3; Ga. L. 1975, p. 675, § 2; Ga. L. 1978, p. 1372, § 1; Ga. L. 1981, p. 1422, § 2; Ga. L. 1988, p. 426, § 1; Ga. L. 2000, p. 1410, § 1; Ga. L. 2002, p. 532, § 24.)

Cross references. — Preservation and disposition of primary and election records of Secretary of State, § 21-2-52. Maintenance

and disposition of primary and election records of election superintendents, § 21-2-73.

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — An agency head has direct supervisory control over the agency records management officer, and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

Application to courts. — While language of 1981 amendment to O.C.G.A. § 50-18-92 conveys surface appearance of being obligatory, the retention schedule for records of a court still becomes effectual only with concurrence of the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

Submission of schedules as prerequisite to their effectiveness. — Local record retention schedules must be submitted to the State Records Committee and approved pursuant to O.C.G.A. § 50-18-92 prior to having the force and effect of law. 1983 Op. Att'y Gen. No. U83-65.

County constitutional officers, other than court personnel, must provide records retention schedules to governing bodies of their respective counties. 1981 Op. Att'y Gen. No. 81-65.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 1, 2, 39, 40.

C.J.S. — 76 C.J.S., Records, §§ 1, 2.

50-18-93. Duties of division.

It shall be the duty of the division to:

(1) Establish and administer, under the direction of a state records management officer, who shall be employed under the rules and regulations of the State Personnel Administration, a records management program;

(2) Develop and issue procedures, rules, and regulations establishing standards for efficient and economical management methods relating to the creation, maintenance, utilization, retention, preservation, and disposition of records, filing equipment, supplies, microfilming of records, and vital records programs;

(3) Assist state agencies in implementing records programs by providing consultative services in records management, conducting surveys in order to recommend more efficient records management practices, and providing training for records management personnel; and

(4) Operate a records center or centers which shall accept all records transferred to it through the operation of approved retention schedules,

provide secure storage and reference service for the same, and submit written notice to the applicable agency of intended destruction of records in accordance with approved retention schedules. (Ga. L. 1972, p. 1267, § 4; Ga. L. 1975, p. 675, § 3; Ga. L. 2002, p. 532, § 25; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" near the end of paragraph (1).

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — An agency head has direct supervisory control over the agency records management officer, and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1. **C.J.S.** — 76 C.J.S., Records, §§ 3, 8, 11, 41.

50-18-94. Duties of agencies.

It shall be the duty of each agency to:

- (1) Cause to be made and preserved records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency and designed to furnish the information necessary to protect the legal and financial rights of the government and of persons directly affected by the agency's activities;
- (2) Cooperate fully with the division in complying with this article;
- (3) Establish and maintain an active and continuing program for the economical and efficient management of records and assist the division in the conduct of records management surveys;
- (4) Implement records management procedures and regulations issued by the division;
- (5) Submit to the division, in accordance with the rules and regulations of the division, a recommended retention schedule for each record series in its custody, except that schedules for common-type files may be established by the division. No records will be scheduled for permanent retention in an office. No records will be scheduled for retention any longer than is absolutely necessary in the performance of required functions. Records requiring retention for several years will be transferred to the records center for low-cost storage at the earliest possible date following creation;

(6) Establish necessary safeguards against the removal or loss of records and such further safeguards as may be required by regulations of the division. The safeguards shall include notification to all officials and employees of the agency that no records in the custody of the agency are to be alienated or destroyed except in accordance with this article; and

(7) Designate an agency records management officer who shall establish and operate a records management program. (Ga. L. 1972, p. 1267, § 5; Ga. L. 1975, p. 675, §§ 4, 5; Ga. L. 1978, p. 1372, § 2; Ga. L. 2002, p. 532, § 26.)

OPINIONS OF THE ATTORNEY GENERAL

Authority of agency head. — An agency head has direct supervisory control over the agency records management officer, and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

Records acquired by Department of Human Resources. — The records acquired by the former Department of Family and Children Services (now Department of Human Resources) fall within this section. 1972 Op. Att'y Gen. No. 72-175.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.

C.J.S. — 76 C.J.S., Records, § 41.

ALR. — Power and duty of recorder to correct errors in public records of transfers or encumbrances of property, 156 ALR 1321.

50-18-95. Agency heads retain authority to determine records required by departments; treatment of confidential records.

(a) Nothing in this article shall be construed to divest agency heads of the authority to determine the nature and form of records required in the administration of their several departments. Notwithstanding this Code section, agency heads shall carry out the provisions of Code Section 50-18-94.

(b) Any records designated confidential by law shall be so treated by the division in the maintenance, storage, and disposition of such confidential records. These records shall be destroyed in such a manner that they cannot be read, interpreted, or reconstructed. (Ga. L. 1972, p. 1267, § 6; Ga. L. 1975, p. 675, § 6; Ga. L. 2002, p. 532, § 27.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 3.

C.J.S. — 76 C.J.S., Records, § 41 et seq.

ALR. — Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

50-18-96. Copies of records as primary evidence.

Photostatic copies of records produced from microfilm and print-out copies of computer records shall be received in any court of this state as primary evidence of the recitals contained therein. (Ga. L. 1972, p. 1267, § 8.)

Cross references. — Evidentiary value of copies of writings generally, § 24-5-20 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 29 Am. Jur. 2d, Evidence, §§ 154, 1099, 1195 et seq.

C.J.S. — 32 C.J.S., Evidence, §§ 885, 886. 32A C.J.S., Evidence, § 1072 et seq.

ALR. — Admissibility in evidence of enlarged photographs or photostatic copies, 72 ALR2d 308.

50-18-97. Effect of certified copies of records; fee.

The division may make certified copies under seal of any records or any preservation duplicates transferred or deposited in the Georgia State Archives or the records center or may make reproductions of such records. The certified copies or reproductions, when signed by the director of the division, shall have the same force and effect as if made by the agency from which the records were received. The division may establish and charge reasonable fees for such services. (Ga. L. 1972, p. 1267, § 9; Ga. L. 2002, p. 532, § 28.)

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 19.

C.J.S. — 76 C.J.S., Records, § 43.

50-18-98. Title to records; access to records of constitutional officers.

(a) Title to any record transferred to the Georgia State Archives as authorized by this article shall be vested in the division. The division shall not destroy any record transferred to it by an agency without consulting with the proper official of the transferring agency prior to submitting a retention schedule requesting such destruction to the State Records Committee. Access to records of constitutional officers shall be at the discretion of the constitutional officer who created, received, or maintained the records, but no limitation on access to such records shall extend more than 25 years after creation of the records.

(b) Title to any record transferred to the records center shall remain in the agency transferring such record to the records center. (Ga. L. 1972, p. 1267, § 10; Ga. L. 1973, p. 691, § 3; Ga. L. 1975, p. 675, § 8; Ga. L. 2002, p. 532, § 29.)

OPINIONS OF THE ATTORNEY GENERAL

Applicability of O.C.G.A. § 50-18-98 to courts requires adoption of retention schedule by State Records Committee and concur-

rence in that retention schedule by the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 5.

C.J.S. — 76 C.J.S., Records, § 41.

50-18-99. Records management programs for local governments.

(a) As used in this Code section, the term:

(1) “Governing body” means the governing body of any county, municipality, or consolidated government. The term includes school boards of this state.

(2) “Office or officer” means any county office or officer or any office or officer under the jurisdiction of a governing body which maintains or is responsible for records.

(b) This article shall apply to local governments, except as modified in this Code section.

(c) All records created or received in the performance of a public duty or paid for by public funds by a governing body are deemed to be public property and shall constitute a record of public acts.

(d) Prior to July 1, 1983, each office or officer shall recommend to the governing body a retention schedule. This schedule shall include an inventory of the type of records maintained and the length of time each type of record shall be maintained in the office or in a record-holding area. These retention periods shall be based on the legal, fiscal, administrative, and historical needs for the record. Schedules previously approved by the State Records Committee will remain in effect until changed by the governing body.

(e) Prior to January 1, 1984, each governing body shall approve by resolution or ordinance a records management plan which shall include but not be limited to:

(1) The name of the person or title of the officer who will coordinate and perform the responsibilities of the governing body under this article;

(2) Each retention schedule approved by the governing body; and

(3) Provisions for maintenance and security of the records.

(f) The Secretary of State, through the division, shall coordinate all records management matters for purposes of this Code section. The

division shall provide local governments with a list of common types of records maintained together with recommended retention periods and shall provide training and assistance as required. The division shall advise local governments of records of historical value which may be deposited in the state archives. All other records shall be maintained by the local government.

(g) Except as otherwise provided by law, ordinance, or policy adopted by the office or officer responsible for maintaining the records, all records shall be open to the public or the state or any agency thereof. (Ga. L. 1972, p. 1267, § 11; Ga. L. 1973, p. 691, § 4; Ga. L. 1978, p. 1372, § 3; Ga. L. 1981, p. 1422, § 1; Ga. L. 2002, p. 532, § 30.)

OPINIONS OF THE ATTORNEY GENERAL

Scope of phrase “any county office or officer”. — Term “office or officer” is defined to mean “any county office or officer or any office or officer under jurisdiction of a governing body which maintains or is responsible for records.” Excluding such court personnel as are listed in O.C.G.A. § 50-18-91(2), the reference to “any county office or officer” would include all other county constitutional officers whether or not the officers are “under the jurisdiction” of the governing body of their county. 1981 Op. Att’y Gen. No. 81-65.

Submission of schedules as prerequisite to their effectiveness. — Local record retention schedules must be submitted to the State Records Committee and approved pursuant to O.C.G.A. § 50-18-92 prior to having the force and effect of law. 1983 Op. Att’y Gen. No. U83-65.

County constitutional officers, other than court personnel, must provide records retention schedules to governing bodies of the officers’ respective counties. 1981 Op. Att’y Gen. No. 81-65.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 1.

C.J.S. — 76 C.J.S., Records, § 1 et seq.

50-18-100. Lifting restrictions on access to confidential, classified, or restricted records after 75 years; earlier lifting.

(a) This Code section applies only to those records:

(1) That are confidential, classified, or restricted by Acts of the General Assembly or may be declared to be confidential, classified, or restricted by future Acts of the General Assembly, unless the future Acts specifically exempt these records from this Code section; and

(2) That have been, or are in the future, deposited in the Georgia State Archives or in other state operated archival institutions because of their value for historical research.

(b) All restrictions on access to records covered by this Code section are lifted and removed 75 years after the creation of the record.

(c) Restrictions on access to records covered by this Code section may be lifted and removed as early as 20 years after the creation of the record on unanimous approval in writing of the State Records Committee.

(d) Applications requesting that the State Records Committee review and consider lifting such restrictions may be made either by the director of the division or by the head of the agency that transferred the record to the archives.

(e) Notwithstanding any other provisions of this Code to the contrary, a date of birth or maiden name contained in genealogical research notes, papers, records, and publications donated to or acquired by the division shall be open to any qualified researcher. (Ga. L. 1975, p. 675, § 10; Ga. L. 2002, p. 532, § 31.)

Cross references. — Record of adoption, § 19-8-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 3, 17 et seq.

C.J.S. — 76 C.J.S., Records, § 43 et seq.

ALR. — Restricting access to judicial records, 175 ALR 1260.

Validity, construction, and application of statutory provisions relating to public access to police records, 82 ALR3d 19.

50-18-101. Use of confidential, classified, or restricted records for research; limitations.

(a) Records that by law are confidential, classified, or restricted may be used for research purposes by private researchers providing that:

- (1) The researcher is qualified to perform such research;
- (2) The research topic is designed to produce a study that would be of potential benefit to the state or its citizens; and
- (3) The researcher will agree in writing to protect the confidentiality of the information contained in the records.

When the purpose of the confidentiality is to protect the rights of privacy of any person or persons who are named in the records, the researcher must agree not to refer to the persons, either in his notes or in his finished study or in any manner, in such a way that they can be identified. When the purpose of the confidentiality is to protect other information, the researcher must agree not to divulge that information.

(b) The head of the agency that created the records, or his designee, shall determine whether or not the researcher and his research topic meet the qualifications set forth in subsection (a) of this Code section prior to accepting the signed agreement from the researcher and granting permission to use the confidential records.

(c) The use of such confidential records for research shall be considered a privilege and the agreement signed by the researcher shall be binding on him. Researchers who violate the confidentiality of these records shall be punished in the same manner as would government employees or officials found guilty of this offense. (Ga. L. 1975, p. 675, § 11.)

Cross references. — Confidentiality of raw research data, § 24-9-40.2.

OPINIONS OF THE ATTORNEY GENERAL

Private researchers allowed access to criminal history records. — Georgia Crime Information Center is permitted to allow private researchers access to criminal history record

information and to impose such conditions on that access as the center deems appropriate. 1975 Op. Att'y Gen. No. U75-78.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, §§ 17, 22 et seq.

C.J.S. — 76 C.J.S., Records, §§ 44, 48 et seq.

ALR. — Restricting access to judicial records, 175 ALR 1260.

50-18-102. Records as public property; disposing of records other than by approved retention schedule as misdemeanor; person acting under article not liable.

(a) All records created or received in the performance of duty and paid for by public funds are deemed to be public property and shall constitute a record of public acts.

(b) The destruction of records shall occur only through the operation of an approved retention schedule. The records shall not be placed in the custody of private individuals or institutions or semiprivate organizations unless authorized by retention schedules.

(c) The alienation, alteration, theft, or destruction of records by any person or persons in a manner not authorized by an applicable retention schedule is a misdemeanor.

(d) No person acting in compliance with this article shall be held personally liable. (Ga. L. 1972, p. 1267, § 7; Ga. L. 1975, p. 675, § 7.)

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Applicability of O.C.G.A. § 50-18-102 to courts requires adoption of a retention schedule by the State Records Committee and concurrence in that retention schedule

by the Administrative Office of the Courts. 1982 Op. Att'y Gen. No. 82-29.

Authority of agency heads. — An agency head has direct supervisory control over the

agency records management officer, and, subject to the approval of the State Records Committee, direct control over the agency's records management program. 1975 Op. Att'y Gen. No. 75-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 66 Am. Jur. 2d, Records and Recording Laws, § 11 et seq.
C.J.S. — 76 C.J.S., Records, § 41 et seq.
ALR. — What constitutes a public record or document within statute making falsification, forgery, mutilation, removal, or other misuse thereof an offense, 75 ALR4th 1067.

50-18-103. Construction of laws and rules.

Whenever laws or rules and regulations prescribe where a record series must be kept, the custodian of the records shall be considered in compliance with the laws and rules and regulations if he transfers the records to a local holding area, a records center, or the Georgia State Archives when he does so in accordance with an approved retention schedule. (Ga. L. 1975, p. 675, § 12.)

Editor's notes. — Ga. L. 1975, p. 675, § 12(a), not codified by the General Assembly, provides that all laws or parts of laws prescribing how long or in what form records shall be kept are repealed.

ARTICLE 6

MICROFORMS

Editor's notes. — Ga. L. 1986, p. 1154, § 1, effective July 1, 1986, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 50-18-120 through 50-18-126 and was based on Ga. L. 1980, p. 519, § 1.

50-18-120. Authority for establishment of standards.

The authority for the establishment of microform standards shall be vested in the State Records Committee. All powers and duties of the State Records Committee as provided in Article 5 of this chapter shall be applicable to the establishment and maintenance of microform standards in this state. With respect to microform standards for the courts, the concurrence of the Administrative Office of the Courts shall be required for the establishment of such standards. (Code 1981, § 50-18-120, enacted by Ga. L. 1986, p. 1154, § 1.)

Cross references. — Authorization of use of photostatic and photographic equipment by clerks of superior courts, § 15-6-87. Admissibility of microfilm, microphotographic and other records, §§ 24-5-26, 50-18-96.

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Application of article. — O.C.G.A. Art. 6, Ch. 18, T. 50 does not apply to the judicial branch of government, as the word agency, absent further definition, does not extend beyond the executive branch of govern-

ment. 1982 Op. Att’y Gen. No. 82-29 (decided under former law making microform requirements applicable to any “agency” of state government).

50-18-121. Limitations on liability.

Any public official or his employee who makes a bona fide attempt at compliance with the standards established under this article shall not be liable for any damages arising from the failure of the microform to meet such standards. (Code 1981, § 50-18-121, enacted by Ga. L. 1986, p. 1154, § 1.)

ARTICLE 7

“MULTIRACIAL” CLASSIFICATION

Editor’s notes. — Ga. L. 1994, p. 1360, § 4, not codified by the General Assembly, provides that the provisions of the Act apply to those applications, questionnaires, and other written documents printed or typed or otherwise originating after July 1, 1994; pro-

vided, however, that all documents printed and in stock on July 1, 1994, which bear the racial designation “other” shall be used and the stock depleted prior to reordering under the provisions of the Act even if the date occurs after July 1, 1994.

50-18-135. “Multiracial” classification requirement; reporting racial data to federal agencies.

(a) As used in this article, the term:

(1) “Multiracial” means having parents of different races.

(2) “State agency” means any state department, board, bureau, commission, authority, council, committee, and any other state agency or instrumentality.

(b) All written forms, applications, questionnaires, and other written documents or material produced by or for or used by any state agency which request information on the racial or ethnic identification of a respondent and which contain an enumeration of racial and ethnic classifications from which such respondent must select one shall include among their choices the classification “multiracial.”

(c) No such written document or computer software described in subsection (b) of this Code section shall bear the designation “other” as a racial or ethnic classification after July 1, 1994, unless such document was printed and in stock before July 1, 1994.

(d) In any instance in which it is required that racial data collected by a state agency be reported to a federal agency, the computation of all persons

designated on state forms or other documents as multiracial shall be reported by such state agency as multiracial. However, if any such federal agency deems the multiracial designation unacceptable, then the reporting state agency shall, upon resubmission of such data, redesignate the multiracial population by allocating a percentage of the number of persons comprising such population to each federally acceptable racial or ethnic classification at the same rate as each such classification comprises the general population of the collected group. (Code 1981, § 50-18-135, enacted by Ga. L. 1994, p. 1360, § 1.)

Cross references. — Multiracial classification on forms, §§ 20-2-2041, 34-1-5.

CHAPTER 19

TRANSPORTATION SERVICES

Article 1

Purchase and Use of Motor Vehicles

Sec.		Sec.	
		50-19-5.	Department of Veterans Service authorized to purchase ambulance; not subject to article restrictions [Repealed].
50-19-1.	Establishment and operation of interagency motor pools; purchase of automobiles for state use; rules governing state vehicles.	50-19-6.	Various state entities authorized to purchase, lease, or accept automobiles; Office of Planning and Budget rules to govern operation, maintenance, use, service, and repair.
50-19-2.	Unlawful to operate vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door; exceptions; penalty for violation.	50-19-7.	Mileage and actual travel expenses for state officials and employees; reimbursement.
50-19-3.	Department of Agriculture authorized to purchase and maintain automobiles; regulation of use, replacement, number, and utilization of automobiles; contracting for services [Repealed].	50-19-8.	Unlawful to transport campaign literature or persons soliciting votes when state paying mileage.
50-19-4.	Units of university system authorized to take possession of donated motor vehicles [Repealed].	50-19-9.	Penalty for violation of provisions relating to purchase or use of automobiles.

Article 2

State Aircraft

50-19-20 through 50-19-26. [Repealed].

ARTICLE 1

PURCHASE AND USE OF MOTOR VEHICLES

Cross references. — Provision that motor vehicles of Georgia State Patrol may not be used except in discharge of official duties, § 35-2-56. Registration and licensing of vehicles of state and subdivisions thereof, § 40-2-35.

50-19-1. Establishment and operation of interagency motor pools; purchase of automobiles for state use; rules governing state vehicles.

The Department of Administrative Services is authorized and empowered:

- (1) To establish and operate an interagency motor pool near the state capitol and to establish and operate motor pools at such other locations as may be desirable to promote efficient and economical use of passenger-carrying automobiles by officers, officials, or employees of the state and of the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state;

(2) To purchase passenger-carrying automobiles for the use of officers, officials, or employees of the state and of the various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state who are required to travel by automobile in performance of their official duties; and

(3) To provide a system of billings for the use of motor vehicles in any motor pool operated by the Department of Administrative Services and to collect, retain, and carry over from year to year in a reserve fund any moneys collected for the use of such motor vehicles. (Ga. L. 1933, p. 106, § 3; Code 1933, § 40-2001; Ga. L. 1967, p. 381, § 1; Ga. L. 1968, p. 477, § 1; Ga. L. 1971, p. 64, § 1; Ga. L. 1972, p. 1125, § 1; Ga. L. 1984, p. 1077, §§ 1, 2; Ga. L. 2005, p. 117, § 17/HB 312.)

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Vehicles which department authorized to service. — By use of the word “such” in describing the vehicles which the Department of Administrative Services is authorized to service and repair, this section provides only for service and maintenance for the motor vehicles which are a part of the interagency motor pool. Therefore, any other motor vehicles which are owned by the various departments, institutions, boards, bureaus, or agencies of the state are not subject to the provisions of this section which provide that maintenance and repair will be conducted by the Department of Administrative Services. 1975 Op. Att’y Gen. No. 75-120.

“Highly specialized motor vehicle equipment.” — To the extent vehicles such as patrol cars operated by the Georgia State Patrol are specially designed and equipped for law enforcement and traffic control and may be considered “highly specialized motor vehicle equipment,” the repair and maintenance of such vehicles would not be subject to regulation. 1975 Op. Att’y Gen. No. 75-120.

Department of Administrative Services is not authorized to regulate the maintenance

and repair of any “highly specialized motor vehicle equipment” owned by the Department of Public Safety. 1975 Op. Att’y Gen. No. 75-120.

Policy prohibiting commercial advertising on state vehicles prevents the Department of Education from operating a donated Toyota van with the slogan “Another Toyota Vehicle Serving the Community” stenciled on the side. 1995 Op. Att’y Gen. No. 95-39.

Applicability as to development authority. — Development authority can expend funds for purchase or lease of an automobile for the use of the executive director as an authority is not the state, a part of the state, or an agency of the state. 1970 Op. Att’y Gen. No. U70-189.

State university is authorized to purchase vehicle to transport students to and from woodlands off the campus for the purpose of research in wildlife conservation. 1950-51 Op. Att’y Gen. p. 288.

Authority to purchase passenger bus. — Supervisor of purchases (now commissioner of administrative services) is authorized to purchase a passenger bus for the use of a state college in the transportation of students. 1950-51 Op. Att’y Gen. p. 308.

50-19-2. Unlawful to operate vehicle owned or leased by the state or any branch, department, agency, commission, board, or authority of the state unless decal or seal affixed to front door; exceptions; penalty for violation.

(a) It shall be unlawful for any person to operate on any public road in this state any motor vehicle which is owned or leased by the state or any

branch, department, agency, commission, board, or authority of the state or which has been purchased or leased by any public official or public employee with state funds, unless there is affixed to the front door on each side of such vehicle a clearly visible decal or seal containing the name of or otherwise identifying the governmental entity owning or leasing such vehicle or on behalf of which entity funds were expended to purchase or lease such vehicle. This Code section shall not apply to any vehicle used for law enforcement or prosecution purposes or any vehicle assigned for the transportation of the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the executive head of any department of state government, the chancellor of the University System of Georgia, the Chief Justice of the Supreme Court of Georgia, any constitutional state official who is elected by the voters of the entire state, or any employees of the Georgia Lottery Corporation.

(b) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor. (Ga. L. 1972, p. 1125, § 6; Ga. L. 2000, p. 486, § 2; Ga. L. 2007, p. 652, § 13/HB 518.)

The 2007 amendment, effective July 1, 2007, in the last sentence of subsection (a), substituted "any constitutional" for "or any Constitutional" and added ", or any employees of the Georgia Lottery Corporation" at the end.

Cross references. — Decal or seal re-

quired on vehicles owned or leased by any county, municipality, regional development center, school system, commission, board, or public authority, § 36-80-20. Description, use, and display of great seal of state, § 50-3-30 et seq.

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Fingerprinting of offenders not required. — A violation of O.C.G.A. § 50-19-2 is not an offense designated as one that requires fin-

gerprinting. 2000 Op. Att'y Gen. No. 2000-11.

50-19-3. Department of Agriculture authorized to purchase and maintain automobiles; regulation of use, replacement, number, and utilization of automobiles; contracting for services.

Reserved. Repealed by Ga. L. 2005, p. 117, § 18/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1972, p. 1125, § 3.

50-19-4. Units of university system authorized to take possession of donated motor vehicles.

Reserved. Repealed by Ga. L. 2005, p. 117, § 19/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Ga. L. 1962, p. 710, § 2; Ga. L. 1972, p. 1125, § 4.

50-19-5. Department of Veterans Service authorized to purchase ambulance; not subject to article restrictions.

Reserved. Repealed by Ga. L. 2005, p. 117, § 20/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was § 1; Ga. L. 1969, p. 634, § 1; Ga. L. 1990, p. based on Ga. L. 1953, Jan.-Feb. Sess., p. 131, 45, § 1.

50-19-6. Various state entities authorized to purchase, lease, or accept automobiles; Office of Planning and Budget rules to govern operation, maintenance, use, service, and repair.

The various offices, agencies, departments, boards, bureaus, commissions, institutions, authorities, or other entities of the state are authorized, subject to the approval of the Office of Planning and Budget consistent with legislative appropriations, to purchase, lease, or accept as donations passenger-carrying automobiles and other motor vehicles for the use of officers, officials, and employees in the performance of their official duties. The operation, use, maintenance, service, and repair of passenger-carrying automobiles shall be governed by the rules and regulations promulgated by the Office of Planning and Budget pursuant to Code Section 45-12-73. (Ga. L. 1972, p. 1125, § 5; Ga. L. 1982, p. 3, § 50; Ga. L. 2005, p. 117, § 21/HB 312.)

50-19-7. Mileage and actual travel expenses for state officials and employees; reimbursement.

The officers, officials, and employees of the executive, legislative, and judicial branches of state government shall be reimbursed for mileage at the same mileage rate established by the United States General Services Administration for federal employees pursuant to Federal Travel Regulation Amendment 2005-01 as of July 1, 2005, or subsequently amended, as traveling expense when traveling in the service of the state or any agency thereof by personal motor vehicle and, in addition to mileage, shall be reimbursed for actual expenses incurred by reason of tolls and parking fees. (Ga. L. 1933, p. 106, § 3; Code 1933, § 40-2002; Ga. L. 1950, p. 224, § 1; Ga. L. 1960, p. 79, § 1; Ga. L. 1962, p. 710, § 1; Ga. L. 1970, p. 118, § 1; Ga. L. 1972, p. 1125, § 2; Ga. L. 1975, p. 816, § 1; Ga. L. 1978, p. 1786, § 1; Ga. L. 1978, p. 1894, § 1; Ga. L. 1980, p. 350, § 1; Ga. L. 1981, p. 856, § 1; Ga. L. 1986, p. 356, § 1; Ga. L. 1995, p. 791, § 1/HB 474; Ga. L. 2000, p. 486, § 3; Ga. L. 2005, p. ES5, § 1/SB 1EX.)

Cross references. — Reimbursement of expenses of state officials generally, § 45-7-20 et seq.

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Provisions of this section pertaining to travel allowance are inapplicable to expenditures by local school systems. 1974 Op. Att'y Gen. No. 74-67.

Employees of Department of Human Re-

sources. — Only mileage allowance permitted to employees of Department of Human Resources is set forth in this section. 1976 Op. Att'y Gen. No. 76-97.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 288.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 279 et seq.

50-19-8. Unlawful to transport campaign literature or persons soliciting votes when state paying mileage.

It shall be unlawful for any officer of this state or any employee of any office, agency, department, board, bureau, commission, institution, authority, or other entity of the state while traveling in vehicles upon which the state is paying transportation mileage to transport any political campaign literature or matter or to engage in soliciting votes or to transport any person or persons soliciting votes in any election or primary. (Ga. L. 1933, p. 106, § 7; Code 1933, § 40-2006; Ga. L. 2005, p. 117, § 22/HB 312.)

JUDICIAL DECISIONS

Cited in *Caldwell v. Bateman*, 252 Ga. 144, 312 S.E.2d 320 (1984).

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Unclassified employees. — There is no prohibition on the contribution of off-duty time or of a financial contribution by employees in the unclassified service, although

the state department could still impose reasonable limitations on such political activities by employees in the unclassified service. 1984 Op. Att'y Gen. No. 84-71.

50-19-9. Penalty for violation of provisions relating to purchase or use of automobiles.

Any person violating any provision of this article or any other general law relating to purchase of automobiles with state funds or use of automobiles by state officers or employees shall be guilty of a misdemeanor and, upon conviction thereof, also shall be removed from office. (Ga. L. 1933, p. 106, § 10; Code 1933, § 40-9902; Ga. L. 2005, p. 117, § 23/HB 312.)

ARTICLE 2
STATE AIRCRAFT

50-19-20 through 50-19-26.

Reserved. Repealed by Ga. L. 2009, p. 848, § 3/SB 85, effective July 1, 2009.

Editor's notes. — This article was based on 1972, p. 1015, § 2008; and Ga. L. 1986, p. 338, § 1.
Ga. L. 1968, p. 130, §§ 1, 2, 7-11; Ga. L.

CHAPTER 20

RELATIONS WITH NONPROFIT CONTRACTORS

Sec.		Sec.	
50-20-1.	Legislative intent.	50-20-6.	Failure to comply; penalties.
50-20-2.	Definitions.	50-20-7.	Reporting packages, financial statements, audit reports, and other schedules to be public records.
50-20-3.	Requirements from nonprofit contractors; audits; political activities.	50-20-8.	Applicability.
50-20-4.	Audits and financial statements; role of state auditor.		
50-20-5.	State organizations required to report to state auditor.		

Editor's notes. — Ga. L. 1998, p. 237, § 1, effective July 1, 1998, repealed the Code Sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 50-20-1 through 50-20-8, relating to relations with nonprofit contractors, and was based on

Ga. L. 1976, p. 1414, §§ 1-7; Ga. L. 1977, p. 1045, §§ 1-8; Ga. L. 1978, p. 1547, §§ 1, 2; Ga. L. 1982, p. 3, § 50; Ga. L. 1983, p. 641, § 1; Ga. L. 1984, p. 22, § 50; Ga. L. 1988, p. 1377, § 1; Ga. L. 1988, p. 1415, § 1; Ga. L. 1989, p. 1317, §§ 6.29, 6.30; Ga. L. 1992, p. 904, § 1.

RESEARCH REFERENCES

ALR. — Validity, construction, and effect of requirement under state statute or local ordinance giving local or locally qualified

contractors a percentage preference in determining lowest bid, 89 ALR4th 587.

50-20-1. Legislative intent.

The intent of this chapter is to provide auditing and reporting requirements for nonprofit organizations which provide services and facilities to the state, to ensure the financial accountability of nonprofit contractors, and to develop adequate information concerning nonprofit contractors. The General Assembly finds that the state has a right and a duty to monitor nonprofit organizations which contract with the state to ensure that their activities are in the public interest and to ensure that public funds are used for proper purposes. (Code 1981, § 50-20-1, enacted by Ga. L. 1998, p. 237, § 1.)

50-20-2. Definitions.

As used in this chapter, the term:

(1) "Corrective action plan" means a plan of corrective action prepared by the nonprofit organization which addresses each audit finding included in the auditor's report. The corrective action plan shall provide the name or names of the contact person or persons responsible for the

corrective action, the corrective action planned, and the anticipated completion date. If the nonprofit organization does not agree with audit findings or believes corrective action is not required, the corrective action plan shall then include an explanation and specific reasons.

(2) "Generally accepted accounting principles" means generally accepted accounting principles specified in generally accepted auditing standards issued by the American Institute of Certified Public Accountants.

(3) "Generally accepted auditing standards" means auditing standards issued by the American Institute of Certified Public Accountants for the conduct and reporting of financial audits.

(4) "Generally accepted government auditing standards" means generally accepted government auditing standards issued by the Comptroller General of the United States, which are applicable to financial audits.

(5) "Nonprofit organization" means any corporation, trust, association, cooperative, or other organization that is operated primarily for scientific, educational, service, charitable, or similar purposes in the public interest; is not organized primarily for profit; and uses its net proceeds to maintain, improve, or expand its operations. The term nonprofit organization includes nonprofit institutions of higher education and hospitals. For financial reporting purposes guidelines issued by the American Institute of Certified Public Accountants should be followed in determining nonprofit status.

(6) "Reporting package" means a package of documents containing a specified audit report, a summary schedule of prior year audit findings, and a corrective action plan for unresolved prior year and current year audit findings. Each audit report should include a schedule of findings and questioned costs and, if deemed necessary by the head of the contracting state organization, a schedule of state awards expended.

(7) "Schedule of state awards expended" means a schedule arranged by state program name and contract number which reflects revenues, expenditures, or expenses and amounts owed to or due from each state organization. Amounts listed for each program should include state or federal funds, or both, which pass through state organizations to the nonprofit contractor.

(8) "State awards" means state or federal funds, or both, received from state organizations through contractual agreement.

(9) "State awards expended" means the disbursement or obligation of state awards by a nonprofit organization.

(10) "State funds" means that portion of contracts funded by state appropriations or other revenue sources retained by the contracting state

organization but does not include federal pass-through assistance. State funds represent the basis for determination of appropriate audit requirements set forth in paragraphs (1) and (2) of subsection (b) of Code Section 50-20-3.

(11) "State organization" means any organization included within the state financial reporting entity. Such organizations include all departments, boards, bureaus, commissions, authorities and other such organizations whose financial activities and balances are included within the State of Georgia Comprehensive Annual Financial Report.

(12) "Summary schedule of prior year audit findings" means a schedule reporting the status of all audit findings included in the prior audit's schedule of findings and questioned costs. The schedule shall also include audit findings reported in the prior audit's summary schedule of prior audit findings which were listed as uncorrected. (Code 1981, § 50-20-2, enacted by Ga. L. 1998, p. 237, § 1.)

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Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 6, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations of this Code section.

Applicability only to entities normally engaging in nonprofit endeavors. — For these provisions to apply, the entity contracting with the state agency must be one normally and generally engaged in nonprofit endeavors, and not simply an organization which, for the purposes of one specific contract, receives no profit for services provided a state agency. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

Nonprofit contractors. — The law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor where the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 6).

Private individuals who contract with the Department of Natural Resources for the preparation of nominations for the National Register of Historic Places or for the restoration or maintenance of sites of historical

value through moneys provided by National Park Service restoration grants are not nonprofit contractors in the sense in which that term is defined and used in the law. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the exemption in this section removes the Board of Regents and its governed institutions from the definition of "nonprofit contractor" used in the section. However, these provisions would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 6).

General nature of nonprofit corporations and organizations. — As a general rule, nonprofit corporations and organizations are those presumably designed for the attainment or conference upon others of spiritual or cultural benefits, or benefits of a philanthropic nature. 1977 Op. Att'y Gen. No. 77-27 (decided under Ga. L. 1976, p. 1414, § 6).

50-20-3. Requirements from nonprofit contractors; audits; political activities.

(a) Before entering into a financial agreement with a nonprofit organization, the head of the contracting state organization shall require the nonprofit organization to furnish financial and such other information as he or she may deem necessary to establish whether or not the nonprofit organization is financially viable and capable of providing services contemplated in the contract and that the agreement does not violate Chapter 10 of Title 45 related to conflicts of interest. Such information may include financial statements, Internal Revenue Service exempt status determination letters, Internal Revenue Service exempt organization information returns, and other related materials.

(b) State organizations which have entered into a financial agreement with a nonprofit organization shall require:

(1) A nonprofit organization which has expended \$100,000.00 or more during its fiscal year in state funds to provide for and cause to be made annually an audit of the financial affairs and transactions of all the nonprofit organization's funds and activities. The audit shall be performed in accordance with generally accepted auditing standards;

(2) A nonprofit organization which has expended less than \$100,000.00 in a fiscal year in state funds shall forward to the state auditor and each contracting state organization a copy of the nonprofit organization's financial statements. If annual financial statements are reported upon by a public accountant, the accountant's report must accompany them. If not, the annual financial statements must be accompanied by the statement of the president or person responsible for the nonprofit organization's financial statements:

(A) Stating the president's or other person's belief as to whether the statements were prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation; and

(B) Describing any respects in which the statements were not prepared on a basis consistent with the statements prepared for the preceding year.

(3) A nonprofit organization which receives funds from a state organization and which meets the federal audit requirements of the Single Audit Act Amendments of 1996 shall submit audit reports and reporting packages performed in accordance with Office of Management and Budget regulations.

(c) All financial statements required in paragraphs (1) and (3) of subsection (b) of this Code section shall be prepared in conformity with generally accepted accounting principles.

(d) Audits made in accordance with this Code section shall be in lieu of any financial audit or reporting requirements under individual state awards. Audits and financial statements required under this Code section, however, shall neither limit the authority of state organizations or the state auditor to conduct or arrange for additional audits of nonprofit organizations contracting with the state. Any additional audits shall be planned and performed in such a way as to build upon work performed by other auditors and shall be funded by the contracting state organization.

(e) Reporting packages or financial statements shall be forwarded to the state auditor and each contracting state organization within 180 days after the close of the nonprofit organization's fiscal year. The state auditor, for good cause, may waive the requirement for completion of an audit within 180 days. Such waiver shall be for an additional period of not more than 90 days, and no such waiver shall be granted for more than two successive years to the same nonprofit organization. The state auditor may prescribe an electronic format for financial statement and audit package submission purposes.

(f) Nonprofit organizations which receive funds from state organizations shall refrain from political activities, including endorsement of any political candidate or party, use of machinery, equipment, postage, stationery, or personnel on behalf of any candidate or any question of public policy subject to referendum. (Code 1981, § 50-20-3, enacted by Ga. L. 1998, p. 237, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 3 and former O.C.G.A. § 50-20-3, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Nonprofit contractors. — The law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor where the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 3).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the exemption in

the law removed the Board of Regents and its governed institutions from the definition of "nonprofit contractor" used in the law. However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 3).

Participation in Job Training Partnership Act. — Nonprofit contractors which participate in the Job Training Partnership Act of 1982, 29 U.S.C. § 1501 et seq., are not required to comply with the reporting requirements of former O.C.G.A. § 50-20-3. 1983 Op. Att'y Gen. No. 83-55 (decided under O.C.G.A. § 50-20-3).

Political activities prohibited by the law are limited to: (1) the endorsement of any political candidate or party; (2) the use of machinery, equipment, postage, stationery, or personnel in behalf of any candidate or any question of public policy subject to a referendum; and (3) the display of political

posters, stickers, or other printed material. 1977 Op. Att’y Gen. No. 77-15 (decided under Ga. L. 1976, p. 1414, § 3).

Salary and expense information of noncontractors receiving “arts grants” funds through the Office of Planning and Budget

based upon the recommendation of the Georgia Council for the Arts must be made available for public inspection. 1995 Op. Att’y Gen. No. 95-31 (decided under O.C.G.A. § 50-20-3).

50-20-4. Audits and financial statements; role of state auditor.

(a) The state auditor shall review the nonprofit organization’s reporting package or financial statements to ensure compliance with the requirements for audits and financial statement presentation for nonprofit organizations. If the state auditor finds such requirements have not been met, the state auditor within 60 days of receipt of the reporting package or financial statements shall submit a list of deficiencies to be corrected to the nonprofit organization and, if appropriate, to the auditor who performed the audit and to the affected state organizations.

(b) If the state auditor has not received the required reporting package or financial statements by the date specified in subsection (e) of Code Section 50-20-3, the state auditor shall within 30 days of such date notify the appropriate state organizations to cease all payments to the nonprofit organization.

(c) The state auditor shall promptly notify appropriate law enforcement officials of any reported irregularities or illegal acts. (Code 1981, § 50-20-4, enacted by Ga. L. 1998, p. 237, § 1.)

50-20-5. State organizations required to report to state auditor.

(a) It shall be the duty of the contracting state organization to determine the financial viability of the nonprofit organization as described in subsection (a) of Code Section 50-20-3 before entering into a financial agreement with a nonprofit organization and to monitor the performance of the nonprofit organization under terms of the financial agreement.

(b) State organizations entering into agreements with nonprofit organizations shall report to the state auditor all such agreements and shall provide each individual nonprofit organization’s name, fiscal year end, contract amount, and other information as required by the state auditor.

(c) When contracting with a nonprofit organization, a state organization shall provide the nonprofit organization with the following financial and compliance information:

(1) Identification of any state funds included as part of the contract. Such identification should include the contract number;

(2) Identification of any federal pass-through assistance included as part of the contract. Such identification should include the Catalog of Federal Domestic Assistance number; and

(3) Identification of requirements imposed by federal laws, regulations, and the provisions of contracts as well as any state or supplementary requirements imposed by state law or the contributing state organization.

(d) State organizations contracting with nonprofit organizations shall review the corrective action plans to ensure that appropriate corrective action has been taken by the nonprofit organization. If the corrective action listed is determined to be inappropriate, the state organization should formally request additional corrective action by the nonprofit organization. No state organization shall transfer to a nonprofit organization any public funds from any source if a nonprofit organization does not take appropriate corrective action for findings determined to be significant by the state organization. (Code 1981, § 50-20-5, enacted by Ga. L. 1998, p. 237, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 5, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts between state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor where the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 5).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and its governed institutions from the definition of "nonprofit contractor" used in former O.C.G.A. § 50-20-2. However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 5).

50-20-6. Failure to comply; penalties.

(a) A nonprofit organization which receives state awards from a state organization and which, after having received the funds, does not comply with this chapter shall be required to repay the funds to the state organization and shall be prohibited from receiving funds from any state organization for a period of 12 months from the date of notification by the state organizations or the state auditor of the failure to comply.

(b) This Code section shall be cumulative to any other penalties applicable to the misuse of public funds. (Code 1981, § 50-20-6, enacted by Ga. L. 1998, p. 237, § 1.)

50-20-7. Reporting packages, financial statements, audit reports, and other schedules to be public records.

All reporting packages, financial statements, audit reports, and other schedules required by this chapter shall be public records and shall be made

available for public inspection during regular office hours. (Code 1981, § 50-20-7, enacted by Ga. L. 1998, p. 237, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 6, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts between state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor where the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 6).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and its governed institutions from the definition of "nonprofit contractor". However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 6).

50-20-8. Applicability.

(a) Except as provided in paragraphs (1) through (3) of subsection (b) and paragraphs (1) and (2) of subsection (c) of this Code section, all contracts between a nonprofit organization and a state organization shall be subject to this chapter.

(b) This chapter shall not apply to:

- (1) Procurement contracts used to buy goods or services from vendors;
- (2) Individual employment contracts; and
- (3) Benefit payments or other related payments made by state organizations to a nonprofit organization on behalf of individuals for health care or other services.

(c) The provisions of subsection (b) of Code Section 50-20-3 shall not apply to the following:

- (1) Nonprofit organizations affiliated with the University System of Georgia which are organized or operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations in the name of the board of regents or individual units of the University System of Georgia or related programs and which expend less than \$25,000.00 in state awards;
- (2) Nonprofit organizations affiliated with the State Board of Technical and Adult Education or with postsecondary technical schools operated under the state level management and operational control of the

State Board of Technical and Adult Education which organizations are operated primarily for the purpose of serving, soliciting, receiving, and investing gifts and donations for the board, such schools, or related programs and which expend less than \$25,000.00 in state awards; and

(3) Nonprofit organizations which expend less than \$25,000.00 in state awards. (Code 1981, § 50-20-8, enacted by Ga. L. 1998, p. 237, § 1.)

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1976, p. 1414, § 2, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Noncompetitively bid contracts between state agencies and nonprofit contractors. — Law covers all noncompetitively bid contracts, other than individual employment contracts, that are entered into between a state agency and a nonprofit contractor where the nonprofit contractor receives public funds of any kind under the contract. 1976 Op. Att'y Gen. No. 76-64 (decided under Ga. L. 1976, p. 1414, § 2).

Contracts between state agencies and university system. — Law is not applicable to contracts between the Department of Natural Resources and universities and their units or extensions which are part of the University System of Georgia or the university system of another state since the statutory exemption removed the Board of Regents and its governed institutions from the definition of "nonprofit contractor". However, these sections would, in most instances, be applicable to contracts with private colleges and universities. 1976 Op. Att'y Gen. No. 76-88 (decided under Ga. L. 1976, p. 1414, § 2).

CHAPTER 21

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU; STATE TORT CLAIMS

Article 1		Sec.	
Waiver of Sovereign Immunity as to Actions Ex Contractu			
Sec.			
50-21-1.	Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.	50-21-27.	ments and information furnished. Retroactive operation; limitations of actions; applicability of other related statutes.
		50-21-28.	Venue of actions.
		50-21-29.	Trial of actions; limitations on amounts of damages; caps to limit total damages regardless of the type claimed.
Article 2			
State Tort Claims		50-21-30.	Punitive or exemplary damages or interest prior to judgment not allowed.
50-21-20.	Short title.	50-21-31.	Interest rate after judgment.
50-21-21.	Legislative intent.	50-21-32.	Signing of pleadings, motions, or other papers.
50-21-22.	Definitions.	50-21-33.	Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.
50-21-23.	Limited waiver of sovereign immunity.	50-21-34.	Payment of claims or judgments; execution or levy against state funds or property prohibited; amount of fiscal year aggregate liability.
50-21-24.	Exceptions to state liability.	50-21-35.	Service of process; mailing of complaint.
50-21-24.1.	Workers' compensation exclusive remedy not waived; workers' compensation fund to pay claims.	50-21-36.	Settlement of claims.
50-21-25.	Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.	50-21-37.	Hold harmless and indemnification agreements.
50-21-26.	Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of docu-		

Cross references. — Immunity of the Board of Regents of the University System of Georgia, § 20-3-36. Immunity of the Private Colleges and Universities Facilities Authority, § 20-3-205. Immunity of municipal corporations, § 36-33-1. Sovereign immunity generally, Ga. Const. 1983, Art. I, Sec. II, Para. IX.

Editor's notes. — Ga. L. 1982, p. 2261, § 1 also enacted a Chapter 21 of Title 50, which was thereupon unofficially designated Chapter 22 of this title and then officially reded-

ignated as Article 8 of Chapter 12 of this title by Ga. L. 1983, p. 3, § 39.

Administrative rules and regulations. — Georgia Volunteer Health Care Program, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Community Health, Georgia Volunteer Health Care Program, Chapter 111-5-1.

Law reviews. — For article, "Georgia's Public Duty Doctrine: The Supreme Court Held Hostage," see 51 Mercer L. Rev. 73 (1999).

ARTICLE 1

WAIVER OF SOVEREIGN IMMUNITY AS TO ACTIONS EX CONTRACTU

Editor's notes. — Ga. L. 1992, p. 1883, Section 50-21-1 as Article 1 and added Article 1, effective July 1, 1992, designated Code section 2.

50-21-1. Waiver of sovereign immunity as to actions ex contractu for breach of written contract to which state is party; venue.

(a) The defense of sovereign immunity is waived as to any action ex contractu for the breach of any written contract existing on April 12, 1982, or thereafter entered into by the state, departments and agencies of the state, and state authorities.

(b) Venue with respect to any such action shall be proper in the Superior Court of Fulton County, Georgia. The provisions of this subsection shall be cumulative and supplemental to any other venue provisions permitted on April 12, 1982, or thereafter permitted by law. (Ga. L. 1982, p. 495, § 1; Code 1981, § 50-21-1, enacted by Ga. L. 1982, p. 495, § 2; Ga. L. 1984, p. 22, § 50.)

Law reviews. — For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

JUDICIAL DECISIONS

Action by state retirees for breach and impairment of contract not barred. — Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., did not bar a state employees' breach and impairment of contract suit against the Employees Retirement System of the State of Georgia as the action sounded in contract and O.C.G.A. § 50-21-1, which was not part of the GTCA, which waived sovereign immunity as to an action ex contractu for the breach of a written contract. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

No waiver of immunity for oral contracts. — Even though sovereign immunity has been waived for the breach of any written contract, O.C.G.A. § 50-21-1, there has been no such waiver for oral contracts. *Soloski v. Adams*, 600 F. Supp. 2d 1276 (N.D. Ga. 2009).

Cited in *Fedorov v. Bd. of Regents for Univ. of Georgia*, 194 F. Supp. 2d 1378 (S.D. Ga. 2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, § 92.

C.J.S. — 81A C.J.S., States, § 533 et seq.

ARTICLE 2

STATE TORT CLAIMS

Law reviews. — For article, “The 1992 Georgia Tort Claims Act,” see 9 Ga. St. U.L. Rev. 431 (1993). For article, “Tort Claims Against the State: Georgia’s Compensation System,” see 32 Ga. L. Rev. 1103 (1998). Administrative Law, see 53 Mercer L. Rev. 81 (2001). For article, “Torts,” see 53 Mercer L.

Rev. 441 (2001). For article, “Trial Practice and Procedure,” see 53 Mercer L. Rev. 475 (2001). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

For note on 1992 enactment of this article, see 9 Ga. St. U.L. Rev. 349 (1992).

50-21-20. Short title.

This article shall be known and may be cited as “The Georgia Tort Claims Act.” (Code 1981, § 50-21-20, enacted by Ga. L. 1992, p. 1883, § 1.)

Law reviews. — For annual survey of law of torts, see 44 Mercer L. Rev. 375 (1992). For article, “Local Government Tort Liability: the Summer of ’92,” see 9 Ga. St. U.L. Rev. 405 (1993). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004). For annual survey of trial practice and procedure, see 56 Mercer L. Rev. 433 (2004). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For annual survey of trial practice and procedure, see 57 Mercer L. Rev. 381 (2005). For annual survey of tort

law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

For note, “Seay v. Cleveland: Resolution of the Ministerial Discretionary Dichotomy,” see 51 Mercer L. Rev. 787 (2000). For note, “The Georgia Tort Claims Act: A License for Negligence in Child Deprivation Cases?,” see 18 Ga. St. U.L. Rev. 795 (2002).

For note, “Finding Immunity: Manders v. Lee and the Erosion of 1983 Liability,” see 55 Mercer L. Rev. 1505 (2004).

JUDICIAL DECISIONS

Constitutionality. — The statutory scheme under which plaintiffs having tort claims against the state have the benefit of the broad waiver of sovereign immunity afforded by the Georgia Tort Claims Act, O.C.G.A. Art. 2, Ch. 21, T. 50, which does not extend to counties, whereas a county’s waiver of immunity is allowed only to the extent of insurance purchased for negligence arising from the use of a motor vehicle, results in unequal treatment, however, it does not violate due process or equal protection. *Woodard v. Laurens County*, 265 Ga. 404, 456 S.E.2d 581 (1995).

O.C.G.A. Art. 2, Ch. 21, T. 50 does not violate Ga. Const. 1983, Art. I, Sec. II, Para. I since the statutes were enacted under the authority of an amendment approved by a majority of the voters. *Dollar v. Dalton Pub.*

Schs., 233 Ga. App. 827, 505 S.E.2d 789 (1998).

Definition of “state officer or employee” does not include “borrowed servant or employee”. — Because the definition of “state officer or employee” in the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-22(7), fails to explicitly include the term “borrowed servant or employee” and fails to include agents of the state of Georgia, the Georgia General Assembly has failed to designate borrowed servants as state employees for purposes of the GTCA. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 296 Ga. App. 32, 673 S.E.2d 582 (2009).

Construction with Georgia Recreational Property Act. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not change the application of the Georgia Recreational Property

Act, O.C.G.A. § 51-3-20 et seq.; a welcome center where a traveler was injured was recreational, and thus the department which owned the welcome center was immune from liability. *Matheson v. Ga. DOT*, 280 Ga. App. 192, 633 S.E.2d 569 (2006).

Waiver for suits seeking contribution and indemnity. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20, waived sovereign immunity for suits seeking contribution and indemnity from the state where the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. *DOT v. Montgomery Tank Lines, Inc.*, 276 Ga. 105, 575 S.E.2d 487 (2003).

Article not exclusive means to waive immunity. — Considering the 1991 constitutional amendment as a whole (Ga. Const. 1983, Art. I, Sec. II, Para. IX), sovereign immunity is waived by any legislative act which specifically provides that sovereign immunity is waived and the extent of such waiver; thus, the enactment of the State Tort Claims Act, O.C.G.A. Art 2, Ch. 21, T. 50 was but one of the ways the legislature could constitutionally waive sovereign immunity. *Gilbert v. Richardson*, 264 Ga. 744, 452 S.E.2d 476 (1994).

Right of action provided in the Georgia Whistleblower Act, O.C.G.A. § 45-1-4, is a waiver of Georgia's sovereign immunity independent of the waiver in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Pattee v. Ga. Ports Auth.*, 477 F. Supp. 2d 1253 (S.D. Ga. Dec. 18, 2006).

Nuisance exception to sovereign immunity. — The 1990 constitutional amendment eliminating the insurance waiver provision and substituting a Tort Claims Act, O.C.G.A. Art. 2, Ch. 21, T. 50, waiver did not conflict with the nuisance exception to sovereign immunity and a municipality can be liable for creating or maintaining a nuisance which constitutes a danger to life and health or a taking of property. *City of Thomasville v. Shank*, 263 Ga. 624, 437 S.E.2d 306 (1993).

Intra-military immunity. — Trial court erred in denying state defense agency's motion for summary judgment on the civilian technician's personal injury action brought pursuant to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., as the state defense agency had intra-military immunity from that claim since the claim arose out of

work that was inherently military in nature and the civilian technician was acting in a military capacity repairing military equipment at the time of injury. *Ga. DOD v. Johnson*, 262 Ga. App. 475, 585 S.E.2d 907 (2003).

Design standards exception. — Summary judgment for the Georgia Department of Transportation (DOT) was improper as the affidavits of the plaintiffs' expert, a DOT witness, and a City's Director of Public Works created a fact issue as to whether the DOT's failure to consider excess fill soil disposal in its design plans complied with generally accepted engineering and design standards under O.C.G.A. § 50-21-24(10); the design standards exception was a limitation on the exceptions to a state's sovereign immunity established by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Reidling v. City of Gainesville*, 280 Ga. App. 698, 634 S.E.2d 862 (2006).

Georgia Military College is entitled to sovereign immunity except to the extent sovereign immunity has been waived. *Georgia Military College v. Santamorena*, 237 Ga. App. 58, 514 S.E.2d 82 (1999).

Claim time barred for display of skeletal remains. — Adult child's tort claims against a state university board of regents for the autopsy, study, and display of the parent's skeletal remains in a glass case in a medical school for decades were dismissed because the claims accrued no later than 1950, at which time sovereign immunity applied to Georgia and the state's agencies; thus, a trial court erred in denying the board's motions for summary judgment and dismissal. *Bd. of Regents v. Oglesby*, 264 Ga. App. 602, 591 S.E.2d 417 (2003).

Failure to comply with notice provision. — After a truck driver became involved in an altercation with a Georgia Port Authority employee during a delivery and was barred from the Savannah River terminal for 30 days, the driver's claim under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the driver suffered severe economic loss as a result of being barred from the terminal was procedurally barred because the driver failed to comply with the Act's notice provision, O.C.G.A. § 50-21-26. *Gambell v. Ga. Ports Auth.*, 276 Ga. App. 115, 622 S.E.2d 464 (2005).

Notice requirements. — Because an injured motorist sent ante litem notice of a

negligence action against the Georgia Department of Transportation to the Commissioner of the Department of Administrative Services, rather than to the Risk Management Division of that department, as required by O.C.G.A. § 50-21-26, the notice did not meet the strict compliance requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; the trial court properly granted the state's motion to dismiss the complaint for lack of subject matter jurisdiction over the action. *Shelnutt v. Ga. DOT*, 272 Ga. App. 109, 611 S.E.2d 762 (2005).

Immunity applies to county sheriffs. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not apply to a wrongful death suit brought against a county, a sheriff, and a deputy; under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), sheriffs are county officers and O.C.G.A. § 50-21-22(5) excludes counties from the Act, and moreover the county paid the salaries and employee benefits of the sheriff and the sheriff's employees and funded the sheriff's department. *Nichols v. Prather*, 286 Ga. App. 889, 650 S.E.2d 380 (2007), cert. denied, 2007 Ga. LEXIS 766 (Ga. 2007).

Official immunity applied. — Summary judgment based on official immunity for a school teacher sued over a student's death was proper as certain school employees were immune from liability for supervising students on a school bus and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was inapplicable. *Aliffi v. Liberty County Sch. Dist.*, 259 Ga. App. 713, 578 S.E.2d 146 (2003).

In a wrongful death action, the Georgia DOT was entitled to sovereign immunity under O.C.G.A. § 50-21-24(9). Furthermore, O.C.G.A. § 50-21-24(10) granted immunity to the DOT from a claim that the fatal accident was proximately caused by a deficiently designed intersection, especially since no evidence was presented that the intersection was not initially designed in substantial compliance with existing engineering or design standards; moreover, under both O.C.G.A. §§ 32-6-50 and 32-6-51(a)(1), the decision of the county department of transportation, and the department's employees, to install the traffic signal necessarily entailed discretionary acts done to perform a specific duty or a manda-

tory fixed obligation for which mandamus would lie to compel performance, entitling the county and the county's employees to official or qualified immunity. *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

Department of Human Resources cannot be held liable for the negligence of an independent contractor. The Georgia General Assembly has spoken by removing from the pool of state employees covered by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., independent contractors and corporations, and by failing to include in O.C.G.A. § 51-2-5 a waiver of sovereign immunity. Thus, plaintiff's claim of negligence, based on a failure to notify of the child's sickle cell anemia, against the department was barred by sovereign immunity. In *re Carter*, 288 Ga. App. 276, 653 S.E.2d 860 (2007).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as the employees were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. *Chisolm v. Tippens*, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

Community service boards. — Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. *Oconee Cmty. Serv. Bd. v. Holsey*, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

State had no liability for false imprisonment claim. — Trial court did not err in dismissing on sovereign immunity grounds an inmate's tort claim alleging false imprisonment against the Department of Corrections since the state was shielded from liability against a false imprisonment claim pursuant to O.C.G.A. § 50-21-24(7). *Watson v. Ga. Dep't of Corr.*, 285 Ga. App. 143, 645 S.E.2d 629 (2007).

Assault and battery immunity applied in prison death case. — Parent's wrongful death suit against a prison where the parent's adult child was incarcerated was properly dismissed by the trial court as the suit was barred by the waiver of sovereign immunity set forth in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(7), since the adult child was killed as a result of an assault and battery committed by a cell mate. *Southerland v. Ga. Dep't of Corr.*, 293 Ga. App. 56, 666 S.E.2d 383 (2008).

Georgia Tort Claims Act did not bar suit. — Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq., did not bar a state employees' breach and impairment of contract suit against the Employees Retirement System of the State of Georgia, as the suit sounded in contract and O.C.G.A. § 50-21-1, which was not part of the GTCA, which waived sovereign immunity in an action ex contractu for the breach of a written contract. *Alverson v. Employees' Ret. Sys.*, 272 Ga. App. 389, 613 S.E.2d 119 (2005).

Sovereign immunity waived liability for acts of agents of agency. — Trial court erred by denying a state agency's motion to dismiss a wrongful death complaint against the agency

for the negligent acts of workers the agency hired through an agency as the definition of "state officer or employee" in the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-22(7) did not include the term borrowed servant or employee and failed to include agents of the state; thus, the Georgia General Assembly has failed to designate borrowed servants as state employees for purposes of the GTCA. Therefore, the trial court erred in concluding that the state's sovereign immunity was subject to waiver for the hired workers' acts and in denying the state agency's motion to dismiss on the ground of sovereign immunity. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 296 Ga. App. 32, 673 S.E.2d 582 (2009).

Cited in *Seay v. Cleveland*, 270 Ga. 64, 508 S.E.2d 159 (1998); *DOT v. Cox*, 246 Ga. App. 221, 540 S.E.2d 218 (2000); *CSX Transp., Inc. v. City of Garden City*, 277 Ga. 248, 588 S.E.2d 688 (2003); *Ga. Forestry Comm'n v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006); *Perdue v. Athens Tech. College*, 283 Ga. App. 404, 641 S.E.2d 631 (2007); *State of Ga. v. Haynes*, 285 Ga. App. 637, 647 S.E.2d 331 (2007); *Southerland v. Ga. Dep't of Corr.*, 293 Ga. App. 56, 666 S.E.2d 383 (2008).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 18A Am. Jur. Pleading and Practice Forms, Municipal, School, and State Tort Liability, § 1 et seq.

ALR. — Liability of municipality or other governmental unit for failure to provide police protection from crime, 90 ALR5th 273.

When is federal agency employee independent contractor, creating exception to United States waiver of immunity under Federal Tort Claims Act (28 U.S.C.A. § 2671), 166 ALR Fed. 187.

50-21-21. Legislative intent.

(a) The General Assembly recognizes the inherently unfair and inequitable results which occur in the strict application of the traditional doctrine of sovereign immunity. On the other hand, the General Assembly recognizes that, while private entrepreneurs voluntarily choose the ambit of their activity and can thereby exert some control over their exposure to liability, state government does not have the same flexibility. In acting for the public good and in responding to public need, state government must provide a broad range of services and perform a broad range of functions throughout the entire state, regardless of how much exposure to liability may be involved. The exposure of the state treasury to tort liability must therefore be limited. State government should not have the duty to do everything that

might be done. Consequently, it is declared to be the public policy of this state that the state shall only be liable in tort actions within the limitations of this article and in accordance with the fair and uniform principles established in this article.

(b) The General Assembly also recognizes that the proper functioning of state government requires that state officers and employees be free to act and to make decisions, in good faith, without fear of thereby exposing themselves to lawsuits and without fear of the loss of their personal assets. Consequently, it is declared to be the public policy of this state that state officers and employees shall not be subject to lawsuit or liability arising from the performance or nonperformance of their official duties or functions.

(c) All of the provisions of this article should be construed with a view to carry out this expression of the intent of the General Assembly. (Code 1981, § 50-21-21, enacted by Ga. L. 1992, p. 1883, § 1.)

JUDICIAL DECISIONS

Immunity granted to agencies under the Community Services Act. O.C.G.A. § 42-8-71(d), promotes a public policy that was not superseded or repealed by implication by the 1991 amendment of this paragraph providing for the waiver of the state's sovereign immunity or by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., enacted pursuant to the amendment. *Department of Human Resources v. Mitchell*, 238 Ga. App. 477, 518 S.E.2d 440 (1999).

Contribution and indemnity if not within exceptions. — Georgia Torts Claim Act, O.C.G.A. § 50-21-20 et seq., waived sovereign immunity for suits seeking contribution and indemnity from the state where the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. *DOT v. Montgomery Tank Lines, Inc.*, 276 Ga. 105, 575 S.E.2d 487 (2003).

Municipalities do not come within the ambit of the 1991 amendment to Ga. Const. 1983, Art. I, Sec. II, Para. IX pursuant to which sovereign immunity was extended to the state and all of the state's departments and agencies. *City of Thomaston v. Bridges*, 264 Ga. 4, 439 S.E.2d 906 (1994).

No liability for approving wall construction permit. — State is only liable in tort actions within the limitations of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. Since a lawsuit arose from the state's approval of a permit for the construction of a

decorative wall, which was specifically excluded by O.C.G.A. § 50-21-24(9), the Department of Transportation was entitled to summary judgment as a matter of law. *DOT v. Bishop*, 216 Ga. App. 57, 453 S.E.2d 478 (1995).

School districts. — Neither the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., nor any other Act of the General Assembly waived the sovereign immunity of county-wide school districts. *Teston v. Collins*, 217 Ga. App. 829, 459 S.E.2d 452 (1995).

Immunity extends to school districts. — Sovereign immunity extends to school districts under the 1991 amendment of Ga. Const. 1983, Art. I, Sec. II, Para. IX, and the legislature has not provided for a waiver of such immunity. *Bitterman v. Atkins*, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

Public duty doctrine inapplicable. — In an action against the DOT arising from an intersectional collision, the public duty doctrine did not require that a special relationship be shown between the victim and the department because the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., created state exposure to potential liability for losses. *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995), *aff'd*, 267 Ga. 6, 471 S.E.2d 849 (1996).

Physician whose license was temporarily suspended could not file suit against officers of the Board of Medical Examiners or other

state employees for their actions relating to the suspension. *Howard v. Miller*, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Physician treating prisoners. — Since the prisoner's doctor was an independent contractor, not an employee of the sheriff, the doctor was not an employee within the meaning of O.C.G.A. § 50-21-22 and did not have official immunity; therefore, any negligence of the doctor could not be imputed to the sheriff. *Cantrell v. Thurman*, 231 Ga. App. 510, 499 S.E.2d 416 (1998).

Intervening private party negligence protects department. — Georgia Department of Human Resources was protected from suit by decedent's estate and next of kin due to the residential care facility's intervening negligence in failing to follow water temperature regulations which caused second and third degree burns to decedent resulting in death. *Lewis v. Ga. Dep't of Human Res.*, 255 Ga. App. 805, 567 S.E.2d 65 (2002).

Immunity waived. — State Department of Transportation waived the department's sovereign immunity under O.C.G.A. § 50-21-22(1), where the department was a joint tortfeasor and thus responsible for contribution and indemnity to the responsible party; the trial court thus did not err in denying the department's motion to dismiss claims. *DOT v. Montgomery Tank Lines*, 253 Ga. App. 143, 558 S.E.2d 723 (2001), *aff'd*, 276 Ga. 105, 575 S.E.2d 487 (2003).

Construction with O.C.G.A. § 50-21-24. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign im-

munity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. *Ga. Forestry Comm'n v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006).

Accident caused by preventable negligence made law enforcement exception inapplicable. — State public safety department was not immune from liability under O.C.G.A. § 50-21-24(6) for an accident which was caused when a trooper collided with a motorist's truck while the trooper was running radar using the truck as cover because the trooper's actions were not a policy decision, but rather simple, preventable negligence while implementing a non-defective policy. *Ga. Dep't of Pub. Safety v. Davis*, Ga. , 676 S.E.2d 1, 2009 Ga. LEXIS 99 (2009).

More than one proximate cause of loss. — Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick interstate highway and hit a tree. Assuming *arguendo* that the Georgia Department of Transportation (DOT) was immune from a negligence suit under O.C.G.A. § 50-21-24 for a city employee's negligent inspection of the taxi's tires, expert testimony that the tree's proximity to the highway may have violated generally accepted engineering standards rendered the DOT liable under § 50-21-24(10), the design standards exception. *Ga. DOT v. Heller*, Ga. , S.E.2d , 2009 Ga. LEXIS 97 (Mar. 23, 2009).

Cited in *Canfield v. Cook County*, 213 Ga. App. 625, 445 S.E.2d 375 (1994); *Mattox v. Bailey*, 221 Ga. App. 546, 472 S.E.2d 130 (1996); *Howard v. State*, 226 Ga. App. 543, 487 S.E.2d 112 (1997); *Williams v. Department of Human Resources*, 234 Ga. App. 638, 507 S.E.2d 230 (1998); *Department of Human Resources v. Coley*, 247 Ga. App. 392, 544 S.E.2d 165 (2000); *Perdue v. Athens Tech. College*, 283 Ga. App. 404, 641 S.E.2d 631 (2007).

50-21-22. Definitions.

As used in this article, the term:

(1) "Claim" means any demand against the State of Georgia for money only on account of loss caused by the tort of any state officer or

employee committed while acting within the scope of his or her official duties or employment.

(2) “Discretionary function or duty” means a function or duty requiring a state officer or employee to exercise his or her policy judgment in choosing among alternate courses of action based upon a consideration of social, political, or economic factors.

(3) “Loss” means personal injury; disease; death; damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death; pain and suffering; mental anguish; and any other element of actual damages recoverable in actions for negligence.

(3.1) “Occurrence” means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

(4) “Person” means a natural person, corporation, firm, partnership, association, or other such entity.

(5) “State” means the State of Georgia and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, and institutions, but does not include counties, municipalities, school districts, other units of local government, hospital authorities, or housing and other local authorities.

(6) “State government entity” means a state office, agency, authority, department, commission, board, division, instrumentality, or institution.

(7) “State officer or employee” means an officer or employee of the state, elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of the state in any official capacity, whether with or without compensation, but the term does not include an independent contractor doing business with the state. The term state officer or employee also includes any natural person who is a member of a board, commission, committee, task force, or similar body established to perform specific tasks or advisory functions, with or without compensation, for the state or a state government entity, and any natural person who is a volunteer participating as a volunteer, with or without compensation, in a structured volunteer program organized, controlled, and directed by a state government entity for the purposes of carrying out the functions of the state entity. This shall include any health care provider and any volunteer when providing services pursuant to Article 8 of Chapter 8 of Title 31. An employee shall also include foster parents and foster children. Except as otherwise provided for in this paragraph, the term shall not include a corporation whether for profit or not for profit, or any private firm, business proprietorship, company, trust, partnership, association, or other such private entity. (Code 1981, § 50-21-22, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1994, p. 1717, §§ 9, 10; Ga. L. 1998, p. 128, § 50; Ga. L. 2005, p. 1493, § 5/HB 166.)

Editor's notes. — Ga. L. 2005, p. 1493, § 7, not codified by the General Assembly, provides: "This Act shall become effective only if funds are specifically appropriated for purposes of this Act in an appropriations Act making specific reference to this Act. This Act shall become effective when funds as appropriated become available for expendi-

ture." Funds were appropriated at the 2005 session of the General Assembly.

Law reviews. — For survey article on trial practice and procedure for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 439 (2003). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005).

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Applicability of constitutional immunity. — See *Bitterman v. Atkins*, 217 Ga. App. 652, 458 S.E.2d 688 (1995).

Georgia Department of Human Resources and the Department of Juvenile Justice were entitled to sovereign immunity on a claim asserted by the parent for an accidental electrocution of the parent's child because the child had been placed in the care and custody of the state agencies, but was living in a facility operated by an independent contractor through an agreement with the state, and was fatally injured through the negligence of the contractor's employee. *Johnson v. Ga. Dep't of Human Res.*, 278 Ga. 714, 606 S.E.2d 270 (2004).

Unified government of county. — Because the General Assembly has not waived immunity of counties, the trial court did not err in ruling that a claim against a county unified government was barred by sovereign immunity. *Swan v. Johnson*, 219 Ga. App. 450, 465 S.E.2d 684 (1995).

Discretionary functions. — State had a duty to provide youth in the state's custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Department of Children & Youth Servs.*, 236 Ga. App. 696, 512 S.E.2d 339 (1999).

Scope of the discretionary function exception of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., must be determined by the definition in O.C.G.A. § 50-21-22 which is more narrowly drawn than the definition created by preexisting case law. *Brantley v. Department of Human Resources*, 271 Ga. 679, 523 S.E.2d 571 (1999).

State board's acts in procedures used in terminating a state employee were discretionary acts. *Georgia Bd. of Pub. Safety v.*

Jordan, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

County employees fall outside the scope of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and the employees' actions are not subject to the Act's definition of discretionary function that is found in O.C.G.A. § 50-21-22(2). *Cooper v. Paulding County Sch. Dist.*, 265 Ga. App. 844, 595 S.E.2d 671 (2004); *Brown v. Taylor*, 266 Ga. App. 176, 596 S.E.2d 403 (2004).

No discretionary function exception found. — Decision of state employees on the type of emergency medical care to provide incarcerated juveniles does not fall within the discretionary function exception to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Georgia Dep't of Children & Youth Servs.*, 271 Ga. 890, 525 S.E.2d 83 (2000).

"State officer or employee." — In a tort action by a state prisoner held in a county jail under contract with the Department of Corrections for injuries sustained while working on a highway under the supervision of a county employee, summary judgment in favor of the department was precluded by fact issues as to whether the employee was an agent of the department or an independent contractor. *Williams v. Georgia Dep't of Cors.*, 224 Ga. App. 571, 481 S.E.2d 272 (1997).

Full-time Army officer being paid by the United States Army and assigned to instruct ROTC courses at the defendant college was not a state officer or employee as the college had no right to control the time, manner, and method of the Army's performance of the contract pursuant to which the officer taught. *Armstrong State College v. McGlynn*, 234 Ga. App. 181, 505 S.E.2d 853 (1998).

Corporate child care institution and the institution's employee were not an employee of the state for purposes of the Georgia Tort

Claims Act (GTCA), O.C.G.A. § 50-21-20 et seq.; therefore, there was no waiver of sovereign immunity by the state in regard to the GTCA when a juvenile that the Georgia Department of Human Resources and the Georgia Department of Juvenile Justice placed in the child care institution was accidentally killed. *Ga. Dep't of Human Res. v. Johnson*, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. *Ford v. Caffrey*, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Definition of "state officer or employee" does not include "borrowed servant or employee". — Because the definition of "state officer or employee" in the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-22(7), fails to explicitly include the term "borrowed servant or employee" and fails to include agents of the state of Georgia, the Georgia General Assembly has failed to designate borrowed servants as state employees for purposes of the GTCA. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 296 Ga. App. 32, 673 S.E.2d 582 (2009).

Sovereign immunity waived liability for acts of agents of agency. — Trial court erred by denying a state agency's motion to dismiss a wrongful death complaint against the agency for the negligent acts of workers the agency hired through an agency as the definition of "state officer or employee" in the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-22(7) did not include the term borrowed servant or employee and failed to include agents of the state; thus, the Georgia General Assembly has failed to designate borrowed servants as state employees for purposes of the GTCA. Therefore, the trial court erred in concluding that the state's sovereign immunity was subject to waiver for the hired workers' acts and in denying the state agency's motion to dismiss on the ground of sovereign immunity. *Ga. Pines*

Cmty. Serv. Bd. v. Summerlin, 296 Ga. App. 32, 673 S.E.2d 582 (2009).

Georgia Ports Authority covered. — Torts Claims Act, O.C.G.A. § 50-21-20 et seq., applies to the Georgia Ports Authority as sovereign immunity applies thereto. *Miller v. Georgia Ports Auth.*, 217 Ga. App. 876, 460 S.E.2d 100 (1995), *aff'd*, 266 Ga. 586, 470 S.E.2d 426 (1996).

Act not applicable to Georgia Ports Authority employee, seeking reinstatement. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not apply to an action by a former employee of the Georgia Ports Authority (GPA) seeking an injunction prohibiting the GPA from barring the former employee from the GPA's premises and an order reinstating the former employee to the former position. *Premo v. Georgia Ports Auth.*, 227 Ga. App. 27, 488 S.E.2d 106 (1997).

Health department acting solely as a county agency was governed by the same sovereign immunity as the county and a waiver by specific legislative act was necessary in order for the department to be subject to a suit in tort. *Fielder v. Rice Constr. Co.*, 239 Ga. App. 362, 522 S.E.2d 13 (1999).

Discretionary decision not to interfere with arrest. — The decision of police officers not to interfere with the arrests of the plaintiffs called for a consideration of discretion and liability therefor was barred by sovereign immunity. *Rhoden v. Department of Pub. Safety*, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Sovereign immunity applied to teacher and school system. — In a negligence action by a student against a school system and physical education teacher, the system and teacher were entitled to the defense of sovereign immunity, and there was no waiver of immunity by the mere existence of the system's liability insurance policy. *Crisp County Sch. Sys. v. Brown*, 226 Ga. App. 800, 487 S.E.2d 512 (1997).

As the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not divest a public school district of the district's sovereign immunity, plaintiff's various state claims against a physical education teacher and the school system were dismissed. *Davis v. DeKalb County Sch. Dist.*, 996 F. Supp. 1478 (N.D. Ga. 1998), *aff'd sub nom. Davis ex rel. Doe v. DeKalb County Sch. Dist.*, 233 F.3d 1367 (11th Cir. 2000).

Immunity applies to county sheriffs. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et. seq., did not apply to a wrongful death suit brought against a county, a sheriff, and a deputy; under Ga. Const. 1983, Art. IX, Sec. I, Para. III(a), sheriffs are county officers and O.C.G.A. § 50-21-22(5) excludes counties from the Act, and moreover the county paid the salaries and employee benefits of the sheriff and the sheriff's employees and funded the sheriff's department. *Nichols v. Prather*, 286 Ga. App. 889, 650 S.E.2d 380 (2007), cert. denied, 2007 Ga. LEXIS 766 (Ga. 2007).

Sovereign immunity applied to county or school district. — Ga. Const. 1983, Art. I, Sec. II, Para. IX provided that counties and other political subdivisions of the State of Georgia were absolutely immune from suit for tort liability, unless that immunity was specifically waived pursuant to an Act of the General Assembly which specifically provided that sovereign immunity was waived and the extent of such waiver, and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., provided for a limited waiver of the state's sovereign immunity for the torts of the state's officials and employees. However, the Act expressly excluded counties and school districts from the waiver, O.C.G.A. § 50-21-22(5); because plaintiff failed to identify any legislative act that waived the immunity of defendant county or school district, county defendants were immune from suit on plaintiff's state law claims. *McDaniel v. Fulton County Sch. Dist.*, 233 F. Supp. 2d 1364 (N.D. Ga. 2002).

Teacher's action, alleging fraud by a school district in inducing the teacher to resign and to enter an agreement with the district, was barred by sovereign immunity pursuant to O.C.G.A. § 50-21-22(5) as the limited waiver of the state's sovereign immunity for the torts of the state's officers and employees excluded school districts. *Kaylor v. Rome City Sch. Dist.*, 267 Ga. App. 647, 600 S.E.2d 723 (2004).

State transportation department's motion to dismiss was properly granted on the ground that sovereign immunity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A. § 50-21-26(a), and substantial compliance was not sufficient to meet that statute's re-

quirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. *Williams v. Ga. DOT*, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as the district were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. *Chisolm v. Tippens*, 289 Ga. App. 757, 658 S.E.2d 147 (2008), cert. denied, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

Loss. — Court of appeals was correct in the court's determination that venue in defendant's wrongful death action was proper in the county where the death occurred since the term "loss" was not a matter of speculation, was defined in O.C.G.A. § 50-21-22, and which definition included "death". *Georgia DOT v. Evans*, 269 Ga. 400, 499 S.E.2d 321 (1998).

Construction of O.C.G.A. § 50-21-24. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. *Ga. Forestry Comm'n v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006).

Cited in *Gilbert v. Richardson*, 264 Ga. 744, 452 S.E.2d 476 (1994); *Northwest Ga. Regional Hosp. v. Wilkins*, 220 Ga. App. 534, 469 S.E.2d 786 (1996); *Evans v. DOT*, 226

Ga. App. 74, 485 S.E.2d 243 (1997); Bontwell v. Department of Cors., 226 Ga. App. 524, 486 S.E.2d 917 (1997); Jackson v. Department of Human Resources, 230 Ga. App. 595, 497 S.E.2d 58 (1998); Williams v. Georgia Dep't of Human Resources, 272 Ga. 624, 532 S.E.2d 401 (2000); Department of Human Resources v. Coley, 247 Ga. App. 392,

544 S.E.2d 165 (2000); Rayburn v. Hogue, 241 F.3d 1341 (11th Cir. 2001); DOT v. Montgomery Tank Lines, 253 Ga. App. 143, 558 S.E.2d 723 (2001); Aliffi v. Liberty County Sch. Dist., 259 Ga. App. 713, 578 S.E.2d 146 (2003); Currid v. DeKalb State Court Prob. Dep't, 285 Ga. 184, S.E.2d , 2009 Ga. LEXIS 93 (2009).

50-21-23. Limited waiver of sovereign immunity.

(a) The state waives its sovereign immunity for the torts of state officers and employees while acting within the scope of their official duties or employment and shall be liable for such torts in the same manner as a private individual or entity would be liable under like circumstances; provided, however, that the state's sovereign immunity is waived subject to all exceptions and limitations set forth in this article. The state shall have no liability for losses resulting from conduct on the part of state officers or employees which was not within the scope of their official duties or employment.

(b) The state waives its sovereign immunity only to the extent and in the manner provided in this article and only with respect to actions brought in the courts of the State of Georgia. The state does not waive any immunity with respect to actions brought in the courts of the United States. (Code 1981, § 50-21-23, enacted by Ga. L. 1992, p. 1883, § 1.)

Law reviews. — For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004).

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“State officer or employee.” — In a tort action by a state prisoner held in a county jail under contract with the Department of Corrections for injuries sustained while working on a highway under the supervision of a county employee, summary judgment in favor of the department was precluded by fact issues as to whether the employee was an agent of the department or an independent contractor. *Williams v. Georgia Dep't of Cors.*, 224 Ga. App. 571, 481 S.E.2d 272 (1997).

In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made

by the director within the scope of the director's official duties and, thus, the director was immune from liability. *Ford v. Caffrey*, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Construction with Georgia Recreational Property Act. — Tort Claims Act, O.C.G.A. § 50-21-20 et seq., did not change the application of the Georgia Recreational Property Act, O.C.G.A. § 51-3-20 et seq.; a welcome center where a traveler was injured was recreational, and thus the department which owned the welcome center was immune from liability. The immunity claimed by the department was not “sovereign” immunity, but rather was an immunity granted by statute to an owner who invited the public onto land for recreational purposes without charging a fee. *Matheson v. Ga. DOT*, 280 Ga. App. 192, 633 S.E.2d 569 (2006).

Construction of O.C.G.A. § 50-21-24. — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. *Ga. Forestry Comm'n v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006).

Actions outside scope of employment. — Waiver of the state's sovereign immunity for the torts of the state's officers and employees did not extend to losses resulting from conduct that was not within the scope of their official duties or employment. *Cary v. Department of Children & Youth Servs.*, 235 Ga. App. 103, 508 S.E.2d 469 (1998).

Community service boards. — Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. *Oconee Cmty. Serv. Bd. v. Holsey*, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Georgia Ports Authority immune. — Georgia Ports Authority is a state "department or agency" that is entitled to the defense of sovereign immunity but may be liable for the torts of state officers and employees because of the state's waiver of immunity through the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Miller v. Georgia Ports Auth.*, 266 Ga. 586, 470 S.E.2d 426 (1996).

State may be liable as joint tort-feasor. — Nothing in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., contradicts the holding that the state can be liable as a joint tort-feasor and such holding does not violate the provisions of Ga. Const. 1983, Art. VI,

§ VI, Para. VI. *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995), *aff'd*, 267 Ga. 6, 471 S.E.2d 849 (1996).

Trial court did not err in refusing to dismiss an action against the Georgia Department of Transportation seeking joint tortfeasor contribution where the State's sovereign immunity was waived under O.C.G.A. § 50-21-23(a) based on the state's negligent maintenance and design of an intersection. *Ga. DOT v. Fed. Express Corp.*, 254 Ga. App. 149, 561 S.E.2d 470 (2002), *aff'd*, *DOT v. Montgomery Tank Lines, Inc.*, 276 Ga. 105, 575 S.E.2d 487 (2003).

Regulation of private party does not make party a state actor. — While the state does regulate foster parenting to an extent, and thus, arguably has a symbiotic relationship with the foster parents, this relationship does not encourage or sanction child abuse, and the mere fact that a state regulates a private party is not sufficient to make that party a state actor. *Rayburn v. Hogue*, 241 F.3d 1341 (11th Cir. 2001).

Georgia Department of Human Resources and the Department of Juvenile Justice were entitled to sovereign immunity on a claim asserted by the parent for an accidental electrocution of the parent's child because the child had been placed in the care and custody of the state agencies, but was living in a facility operated by an independent contractor through an agreement with the state, and was fatally injured through the negligence of the contractor's employee. *Johnson v. Ga. Dep't of Human Res.*, 278 Ga. 714, 606 S.E.2d 270 (2004).

Immunity extended to another state as a matter of comity. — Because the provisions of the Iowa and Georgia tort claims Acts are conceptually identical, application of Iowa's Tort Claims Act would not violate Georgia's public policy and, as such, Georgia should recognize and give effect to the legislatively declared policy of Iowa as a matter of comity. *University of Iowa Press v. Urrea*, 211 Ga. App. 564, 440 S.E.2d 203 (1993).

Limited waiver of sovereign immunity. — General Assembly granted a limited waiver of sovereign immunity with certain conditions precedent to the waiver; thus, since the plaintiff failed to serve the director of the risk management division, a condition precedent to waiver of sovereign immunity, the state had no duty to respond to the first

timely filed suit. *Sylvester v. DOT*, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Trial court did not err in granting the state transportation department's motion to dismiss on the ground that sovereign immunity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A. § 50-21-26(a) and substantial compliance was not sufficient to meet that statute's requirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. *Williams v. Ga. DOT*, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Plaintiff's federal civil rights claims and state tort claims related to incarceration for violating a consent order enjoining plaintiff from the unauthorized practice of law were barred by the eleventh amendment and the specific preservation of sovereign immunity from tort claims under O.C.G.A. § 50-21-23(b) of the Georgia Tort Claims Act. *Alyshah v. Georgia*, F. Supp. 2d , 2006 U.S. Dist. LEXIS 66546 (N.D. Ga. Sept. 1, 2006), *aff'd*, 2007 U.S. App. LEXIS 18581 (11th Cir. Ga. 2007).

Based on O.C.G.A. § 9-2-61, an arrestee's excessive force claim against a sheriff's major in the major's individual capacity was revived after a voluntary dismissal but assuming that the complaint alleged actual malice under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as to the major's conduct, the tort claim had to be brought against the state under O.C.G.A. § 50-21-25(b); however, the state did not waive the state's sovereign immunity under O.C.G.A. § 50-21-23(b) for such claim to be brought in federal court. *Jude v. Morrison*, 534 F. Supp. 2d 1365 (N.D. Ga. 2008).

No waiver of immunity. — In a wrongful death suit, the trial court erred by denying the motions of the Georgia Department of Human Resources and the Georgia Department of Juvenile Justice to dismiss and for a directed verdict, following the death of a juvenile the agencies placed in a corporate child care institution, as the two agencies

were immune from suit under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and there was no waiver of sovereign immunity by the state. *Ga. Dep't of Human Res. v. Johnson*, 264 Ga. App. 730, 592 S.E.2d 124 (2003).

Trial court properly dismissed a parent's tort claims against the school district and the district's employees as they were immune from suit and excluded from the limited waiver provision under both O.C.G.A. §§ 50-21-22(5) and 50-21-23(a). Moreover, none of the alleged acts showed the malicious, wilful, or wanton conduct necessary to overcome that immunity. *Chisolm v. Tippens*, 289 Ga. App. 757, 658 S.E.2d 147 (2008), *cert. denied*, 129 S. Ct. 576, 172 L.Ed.2d 431 (2008).

Sovereign immunity waived liability for acts of agents of agency. — Trial court erred by denying a state agency's motion to dismiss a wrongful death complaint against the agency for the negligent acts of workers the agency hired through an agency as the definition of "state officer or employee" in the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-22(7) did not include the term borrowed servant or employee and failed to include agents of the state; thus, the Georgia General Assembly has failed to designate borrowed servants as state employees for purposes of the GTCA. Therefore, the trial court erred in concluding that the state's sovereign immunity was subject to waiver for the hired workers' acts and in denying the state agency's motion to dismiss on the ground of sovereign immunity. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 296 Ga. App. 32, 673 S.E.2d 582 (2009).

Law enforcement exception inapplicable. — In a personal injury suit brought by a driver who was rear-ended by a state trooper conducting radar detecting to catch speeders and using the driver's mail truck as a block, the trial court properly denied summary judgment to the Department of Public Safety because the record established evidence that the accident was preventable, and that, therefore, the exception set forth in O.C.G.A. § 50-21-24(6) to sovereign immunity may be overcome by the driver at trial. By following too closely and not paying attention, the situation presented preventable negligence as opposed to a policy decision on the part of the trooper. *Dep't of Pub.*

Safety v. Davis, 289 Ga. App. 21, 656 S.E.2d 178 (2007).

Consent of Governor not necessary to sue state. — Trial court was correct in denying an appellant's request to bring a mandamus action against a Governor, seeking to compel the Governor to consent to a suit against the state, to-wit, filing suit against the state without the Governor's consent, a remedy the appellant had in fact employed. *Garnett v. Hamrick*, 280 Ga. 523, 630 S.E.2d 384 (2006).

Cited in Northwest Ga. Regional Hosp. v. Wilkins, 220 Ga. App. 534, 469 S.E.2d 786 (1996); *Mattox v. Bailey*, 221 Ga. App. 546, 472 S.E.2d 130 (1996); Department of Hu-

man Resources v. Money, 222 Ga. App. 149, 473 S.E.2d 200 (1996); Department of Human Resources v. Coley, 247 Ga. App. 392, 544 S.E.2d 165 (2000); *DOT v. Carr*, 254 Ga. App. 781, 564 S.E.2d 14 (2002); *Smith v. Dep't of Human Res.*, 257 Ga. App. 33, 570 S.E.2d 337 (2002); *Feist v. Dirr*, 271 Ga. App. 169, 609 S.E.2d 111 (2004); Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga., F. Supp. 2d , 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008); *Southerland v. Ga. Dep't of Corr.*, 293 Ga. App. 56, 666 S.E.2d 383 (2008); *Savage v. E. R. Snell Contr., Inc.*, 295 Ga. App. 319, 672 S.E.2d 1 (2008).

RESEARCH REFERENCES

ALR. — When is federal agency employee independent contractor, creating exception to United States waiver of immunity under

Federal Tort Claims Act (28 U.S.C.A. § 2671), 166 ALR Fed. 187.

50-21-24. Exceptions to state liability.

The state shall have no liability for losses resulting from:

(1) An act or omission by a state officer or employee exercising due care in the execution of a statute, regulation, rule, or ordinance, whether or not such statute, regulation, rule, or ordinance is valid;

(2) The exercise or performance of or the failure to exercise or perform a discretionary function or duty on the part of a state officer or employee, whether or not the discretion involved is abused;

(3) The assessment or collection of any tax or the detention of any goods or merchandise by any law enforcement officer;

(4) Legislative, judicial, quasi-judicial, or prosecutorial action or inaction;

(5) Administrative action or inaction of a legislative, quasi-legislative, judicial, or quasi-judicial nature;

(6) Civil disturbance, riot, insurrection, or rebellion or the failure to provide, or the method of providing, law enforcement, police, or fire protection;

(7) Assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, or interference with contractual rights;

(8) Inspection powers or functions, including failure to make an inspection or making an inadequate or negligent inspection of any

property other than property owned by the state to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;

(9) Licensing powers or functions, including, but not limited to, the issuance, denial, suspension, or revocation of or the failure or refusal to issue, deny, suspend, or revoke any permit, license, certificate, approval, order, or similar authorization;

(10) The plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works where such plan or design is prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design;

(11) Financing regulatory activities, including, but not limited to, examinations, inspections, audits, or other financial oversight activities;

(12) Activities of the Georgia National Guard when engaged in state or federal training or duty, but this exception does not apply to vehicular accidents; or

(13) Any failure or malfunction occurring before December 31, 2005, which is caused directly or indirectly by the failure of computer software or any device containing a computer processor to accurately or properly recognize, calculate, display, sort, or otherwise process dates or times, if the failure or malfunction causing the loss was unforeseeable or if the failure or malfunction causing the loss was foreseeable but the plan or design or both for identifying and preventing the failure or malfunction was prepared in substantial compliance with generally accepted computer and information system design standards in effect at the time of the preparation of the plan or design. (Code 1981, § 50-21-24, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1998, p. 850, § 2.)

Law reviews. — For review of 1998 legislation relating to state government, see 15 Ga. St. U.L. Rev. 245 (1998). For article, “Torts,” see 53 Mercer L. Rev. 441 (2001). For survey article on trial practice and procedure for the period from June 1, 2002 to May 31, 2003, see 55 Mercer L. Rev. 439 (2003). For

annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004). For annual survey of law of torts, see 56 Mercer L. Rev. 415 (2004). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007).

JUDICIAL DECISIONS

ANALYSIS

GENERAL CONSIDERATION
DISCRETIONARY FUNCTIONS
APPLICATION

- 1. DEPARTMENT OF TRANSPORTATION
- 2. CRIMINAL ACTS
- 3. LAW ENFORCEMENT
- 4. OTHERS

General Consideration

Contribution and indemnity. — Georgia Torts Claim Act, O.C.G.A. § 50-21-20 et seq., waived sovereign immunity for suits seeking contribution and indemnity from the state where the state was a joint tortfeasor if the state's tortious activity did not fall within one of the waiver exceptions listed in O.C.G.A. § 50-21-24. *DOT v. Montgomery Tank Lines, Inc.*, 276 Ga. 105, 575 S.E.2d 487 (2003).

Construction of O.C.G.A. § 50-21-24(7). — O.C.G.A. § 50-21-24(7) is not limited in application to acts taken by a state officer or employee, but covers all losses resulting from the torts enumerated therein. The focus, therefore, is not on the duty allegedly breached by the state but on the act causing the underlying loss, regardless of who committed the act. *Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd.*, 273 Ga. 715, 545 S.E.2d 875 (2001).

Construction of O.C.G.A. § 50-21-24(6). — In order for state policy decisions related to the provision of emergency services not to be directly or indirectly put on trial, the Supreme Court of Georgia construed O.C.G.A. § 50-21-24(6), an exception to the waiver of sovereign immunity, to provide complete protection of the policy-making decisions in providing police and fire services from judicial review as such construction accomplished a balance between the inherently unfair and inequitable results from the strict application of sovereign immunity and the need to limit the state's exposure to tort liability that the General Assembly expressed as the General Assembly's goal in O.C.G.A. § 50-21-21. *Ga. Forestry Comm'n v. Canady*, 280 Ga. 825, 632 S.E.2d 105 (2006).

Exceptions apply regardless of who commits tort. — Focus of the exceptions to liability in O.C.G.A. § 50-21-24(7) is not on the government action taken, but upon the act that produces the loss; thus, in an action against the Department of Human Resources by the operator of a contract home who was shot by a juvenile placed in the home, it was not the act of placing the juvenile that produced the operator's loss, it was the juvenile's independent tort, and the exception to the waiver of immunity covers any and all losses resulting from the torts enumerated in the paragraph, regardless of who committed the torts. *Department of*

Human Resources v. Hutchinson, 217 Ga. App. 70, 456 S.E.2d 642 (1995); *Christensen v. State*, 219 Ga. App. 10, 464 S.E.2d 14 (1995); *Board of Regents v. Riddle*, 229 Ga. App. 15, 493 S.E.2d 208 (1997); *Department of Human Resources v. Coley*, 247 Ga. App. 392, 544 S.E.2d 165 (2000).

In determining whether an exception to the waiver of sovereign immunity applied, the proper focus was on the act causing the underlying loss and it was not necessary that such act have been committed by a state officer or employee; thus, since the loss was caused by the son's shooting of the decedent, the son's father, the state governmental entities could not be held liable because the loss was caused by an assault or battery for which the exception to the waiver of immunity applied. *Ardizzone v. Ga. Dep't of Human Res.*, 258 Ga. App. 858, 575 S.E.2d 738 (2002).

Limited sovereign immunity waiver was subject to a specific exception for assault or battery, and in determining whether this exception applied, it was not necessary that the act have been committed by a state officer or employee. A community service board was a state agency and was immune from a claim arising from the stabbing death of a resident at a community home run by the board. *Oconee Cmty. Serv. Bd. v. Holsey*, 266 Ga. App. 385, 597 S.E.2d 489 (2004).

Motions to dismiss. — Generally, issues of the waiver of sovereign immunity are issues of law for determination by the trial court under an O.C.G.A. § 9-11-12(b)(1) motion based upon the face of the complaint where the nature of the complaint indicates whether there is waiver with undisputed facts, but waiver of sovereign immunity under O.C.G.A. § 50-21-24 may be a mixed question of law and fact for the trial court's determination. Paragraphs (1), (10), (12), and (13) of O.C.G.A. § 50-21-24 are based upon a factual predicate to determine non-waiver; the facts may be in dispute. *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1 (2002).

Trial court did not err in dismissing on sovereign immunity grounds an inmate's tort claim alleging false imprisonment and a claim under 42 U.S.C. § 1983 against the Department of Corrections since: (1) the state was shielded from liability against a false imprisonment claim, pursuant to

O.C.G.A. § 50-21-24(7); and (2) neither the state nor the Department of Corrections was a "person," as that term was defined under 42 U.S.C. § 1983. *Watson v. Ga. Dep't of Corr.*, 285 Ga. App. 143, 645 S.E.2d 629 (2007).

Discretionary Functions

Exception applied. — Decision of the Department of Human Resources to review records, discuss with staff residents' care needs in a personal care home, and obtain a physician's statement regarding a resident's condition in order to determine if the resident was a suitable resident at the home, rather than taking other action, including reassessing the patient or ordering emergency relocation, entailed policy judgments in which alternate courses of action were weighed in light of competing economic and social factors, and was the performance of a discretionary function or duty within the exception stated in O.C.G.A. § 50-21-24(2). *Bruton v. State Dep't of Human Resources*, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

Acts of foster parents. — Decision by foster parents employed by the Department of Human Resources to leave a two-year-old child unattended in a swimming pool was an insufficient basis on which to invoke the discretionary function exception. *Brantley v. Department of Human Resources*, 271 Ga. 679, 523 S.E.2d 571 (1999), reversing *Brantley v. Department of Human Resources*, 235 Ga. App. 863, 509 S.E.2d 645 (1998).

Medical care. — State had a duty to provide youth in the state's custody with medical care and treatment, but the details of that care were discretionary and therefore subject to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Department of Children & Youth Servs.*, 236 Ga. App. 696, 512 S.E.2d 339 (1999).

Georgia Department of Community Health. — State employee's claims for negligent misrepresentation regarding information on in-network providers of a PPO under a state health benefit plan failed because the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., precluded any action for employees exercising due care in the execution of a regulation and the regulations of the Community Health Board § 478-6.10(6)

specifically stated that sovereign immunity was not waived as to actions in law or equity against the Board or the state to recover money under a plan. *Mitchell v. Ga. Dept. of Cmty. Health*, 281 Ga. App. 174, 635 S.E.2d 798 (2006).

Termination of employees. — Hiring, firing, and disciplining a police officer requires the exercise of professional deliberation and judgment and, therefore, constitutes a discretionary function within the meaning of O.C.G.A. § 50-21-24. *Harper v. City of E. Point*, 237 Ga. App. 375, 515 S.E.2d 623 (1999).

State board's acts in terminating a state employee were discretionary acts; thus, an employee's claim of intentional infliction of emotional distress against the board was precluded by the doctrine of sovereign immunity. *Georgia Bd. of Pub. Safety v. Jordan*, 252 Ga. App. 577, 556 S.E.2d 837 (2001).

No discretionary function exception for procuring emergency medical care. — The decision of state employees on the type of emergency medical care to provide incarcerated juveniles does not fall within the discretionary function exception to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Edwards v. Georgia Dep't of Children & Youth Servs.*, 271 Ga. 890, 525 S.E.2d 83 (2000).

Placement of children by state. — Decision of a caseworker for the Department of Human Resources to place children in a particular home setting was a "discretionary function" and was protected by immunity. *Jackson v. Department of Human Resources*, 230 Ga. App. 595, 497 S.E.2d 58 (1998).

Application

1. Department of Transportation

Public duty doctrine inapplicable. — In an action against the DOT arising from an intersectional collision, the public duty doctrine did not require that a special relationship be shown between the victim and the department because the enactment of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., created state exposure to potential liability for losses. *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995), aff'd, 267 Ga. 6, 471 S.E.2d 849 (1996).

No authority to maintain overgrown area bordering intersection. — In a wrongful

Application (Cont'd)**1. Department of Transportation (Cont'd)**

death action, the trial court did not err in finding the Georgia Department of Transportation immune from suit from liability to the decedent's estate and survivors for failing to maintain an overgrown area of shrubbery that bordered an intersection as neither O.C.G.A. § 32-2-2, when read in concert with O.C.G.A. § 32-4-93, nor O.C.G.A. § 50-21-24(8) imposed liability on the department; hence, maintenance of the area did not constitute a "substantial" or "other major" maintenance activity. *Welch v. Ga. DOT*, 283 Ga. App. 903, 642 S.E.2d 913 (2007).

Discretionary functions applied. — A decision of the DOT to open a road with a change from an all-way to two-way stop configuration was not a policy determination entitling the department to immunity under the discretionary functions exception. *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995), *aff'd*, 267 Ga. 6, 471 S.E.2d 849 (1996).

Highway design exception. — In an action arising from an intersectional collision, where there was sufficient evidence as to whether the DOT complied with generally accepted engineering or design standards in opening a road with a change from an all-way to two-way stop configuration, the trial court did not err in denying a motion for a directed verdict regarding the highway design exception to the waiver of sovereign immunity. *DOT v. Brown*, 218 Ga. App. 178, 460 S.E.2d 812 (1995), *aff'd*, 267 Ga. 6, 471 S.E.2d 849 (1996).

Exemption of the DOT from liability for highway design deficiencies where the design was in substantial compliance with generally accepted engineering or design standards in effect at the time of construction includes protection for the department's failure to upgrade a highway to meet current design standards. *Daniels v. DOT*, 222 Ga. App. 237, 474 S.E.2d 26 (1996).

In an action for injuries sustained in a collision at a highway intersection, since there were no published design guidelines in effect when the highway was designed and the plaintiff failed to present competent evidence that the design was not in substantial compliance with generally accepted en-

gineering or design standards in effect at the time the DOT was exempt from liability. *Daniels v. DOT*, 222 Ga. App. 237, 474 S.E.2d 26 (1996); *DOT v. Cox*, 246 Ga. App. 221, 540 S.E.2d 218 (2000).

Trial court erred in dismissing plaintiff's complaint on the ground that plaintiff's expert's affidavit was insufficient to meet the requirements of O.C.G.A. § 50-21-24 where the expert supplemented the affidavit with testimony adequate to aver that DOT failed to comply substantially with engineering standards applicable at the time an intersection was planned and designed as required by O.C.G.A. § 50-21-24(10). *Lennen v. DOT*, 239 Ga. App. 729, 521 S.E.2d 885 (1999).

Plan or design for construction of or improvement to highways, roads, streets, bridges, or other public works does not waive sovereign immunity if and only if a trial court finds that the court was prepared in substantial compliance with generally accepted engineering or design standards in effect at the time of preparation of the plan or design under O.C.G.A. § 50-21-24(10). To overcome sovereign immunity, expert testimony or other competent evidence must be submitted to show that a plan or design was not prepared in substantial compliance with generally accepted engineering or design standards at the time such plan was prepared. *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1 (2002).

Manual of Uniform Traffic Control Devices is not the exclusive source of engineering and design standards, and a plaintiff alleging that the Georgia Department of Transportation committed engineering malpractice may use expert witnesses to establish such standards. *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1 (2002).

Although the Georgia Department of Transportation was entitled to sovereign immunity under O.C.G.A. § 50-21-24(10) based on the placement of signs warning of a limited sight distance and advising speed reduction at an intersection, the slope of a shoulder did not comply with the standards in effect at the time of the alteration. *Steele v. Ga. DOT*, 271 Ga. App. 374, 609 S.E.2d 715 (2005).

When an injured party sued the Georgia Department of Transportation (DOT) for injuries received in a single-car accident on a county road, the party did not show DOT

was liable under any of the exceptions to sovereign immunity because the party did not show, as required by O.C.G.A. § 50-21-24(10), that DOT's plans for the road on which the accident occurred did not comply with generally accepted engineering or design standards and, in fact, the party's expert testified that the plans complied with such standards. *Ogles v. E.A. Mann & Co.*, 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Summary judgment for the Georgia Department of Transportation (DOT) was improper as the affidavits of the plaintiffs' expert, a DOT witness, and a City's Director of Public Works created a fact issue as to whether the DOT's failure to consider excess fill soil disposal in the DOT's design plans complied with generally accepted engineering and design standards under O.C.G.A. § 50-21-24(10); the design standards exception was a limitation on the exceptions to a state's sovereign immunity established by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Reidling v. City of Gainesville*, 280 Ga. App. 698, 634 S.E.2d 862 (2006).

In a wrongful death action, the Georgia DOT was entitled to sovereign immunity under O.C.G.A. § 50-21-24(9). Furthermore, O.C.G.A. § 50-21-24(10) granted immunity to the DOT from a claim that the fatal accident was proximately caused by a deficiently designed intersection, especially where no evidence was presented that the intersection was not initially designed in substantial compliance with existing engineering or design standards; moreover, under both O.C.G.A. §§ 32-6-50 and 32-6-51(a)(1), the decision of the county department of transportation and the department's employees, to install the traffic signal necessarily entailed discretionary acts done to perform a specific duty or a mandatory fixed obligation for which mandamus would lie to compel performance, entitling the county and the county's employees to official or qualified immunity. *Murray v. Ga. DOT*, 284 Ga. App. 263, 644 S.E.2d 290 (2007).

In a wrongful death and nuisance suit wherein the victim was killed while traveling in a taxi cab on a state highway, the trial court erred in granting the Georgia Department of Transportation's (DOT's) motion to dismiss on the basis of the inspection and

permitting exceptions set forth in O.C.G.A. § 50-21-24(8) and (9), upon concluding that the trial court lacked subject matter jurisdiction over the DOT on the basis of sovereign immunity; there was expert testimony in the record that the DOT failed to follow generally accepted design, construction, and maintenance practices with regard to the roadway and adjacent areas, and that the deviation from the standard of care contributed to the victim's death. Further, the DOT may be held liable as a joint tortfeasor, and it would be a matter for a jury to decide whether the DOT was liable under § 50-21-24(10) for negligent design and negligent maintenance. *Heller v. City of Atlanta*, 290 Ga. App. 345, 659 S.E.2d 617 (2008).

In a wrongful death and nuisance suit wherein the victim was killed while traveling in a taxi cab on a state highway, the trial court erred in granting the Georgia Department of Transportation's (DOT's) motion to dismiss on the basis of the inspection and permitting exceptions set forth in O.C.G.A. § 50-21-24(8) and (9), upon concluding that the trial court lacked subject matter jurisdiction over the DOT on the basis of sovereign immunity; there was expert testimony in the record that the DOT failed to follow generally accepted design, construction, and maintenance practices with regard to the roadway and adjacent areas, and that the deviation from the standard of care contributed to the victim's death. Further, the DOT may be held liable as a joint tortfeasor, and it would be a matter for a jury to decide whether the DOT was liable under O.C.G.A. § 50-21-24(10) for negligent design and negligent maintenance. *Heller v. City of Atlanta*, 290 Ga. App. 345, 659 S.E.2d 617 (2008).

Decedent was killed when the taxi in which the decedent was riding spun out of control on a rain-slick interstate highway and hit a tree. Assuming *arguendo* that the Georgia Department of Transportation (DOT) was immune from a negligence suit under O.C.G.A. § 50-21-24 for a city employee's negligent inspection of the taxi's tires, expert testimony that the tree's proximity to the highway may have violated generally accepted engineering standards rendered the DOT liable under § 50-21-24(10), the design standards exception. *Ga. DOT v.*

Application (Cont'd)**1. Department of Transportation (Cont'd)**

Heller, Ga. , S.E.2d , 2009 Ga. LEXIS 97 (Mar. 23, 2009).

For a municipality to acquire a traffic control device, someone must conduct an engineering study, and the Department of Transportation must exercise the department's professional discretion either to grant or deny a permit to erect such traffic control device, and failure to timely issue a permit to install a traffic control device does not waive sovereign immunity. *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1 (2002).

Setting speed limits was quasi-legislative activity. — In a case in which a parent filed a wrongful death action against the Georgia Department of Transportation, alleging that the department's negligence in choosing to set the speed limit along a certain stretch of highway at 50 miles per hour led to the death of the parent's child, the trial court erred in denying the department's motion to dismiss the complaint on the basis of sovereign immunity under O.C.G.A. § 50-21-24(5) given that: (1) O.C.G.A. § 40-6-182 provided that the Georgia Commissioner of Public Safety and the Commissioner of the Georgia Transportation Department could set the speed limit on any part of the state highway system based on the conditions in that area; (2) the department's participation in setting the speed limit pursuant to § 40-6-182 was quasi-legislative action as the decision entailed adopting rules and was analogous to the legislative activity of making laws; and (3) pursuant to O.C.G.A. § 50-21-24(5), the department could not be held liable for losses resulting from such quasi-legislative action. *DOT v. Watts*, 260 Ga. App. 905, 581 S.E.2d 410 (2003).

2. Criminal Acts

False imprisonment. — Commissioner of Georgia Department of Corrections was entitled to official immunity in case of claim by former prisoner of false imprisonment. *Collier v. Whitworth*, 205 Ga. App. 758, 423 S.E.2d 440 (1992).

Libel and slander. — Action by inmate against a correctional officer alleging that the officer was liable for libel and slander for

writing false disciplinary reports was barred by provision of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the state will have no liability for losses resulting from libel and slander. *Howard v. Burch*, 210 Ga. App. 515, 436 S.E.2d 573 (1993).

Inmate's state law battery claim against the Department of Corrections was barred by the exception in O.C.G.A. § 50-21-24 for losses caused by battery. *Mattox v. Bailey*, 221 Ga. App. 546, 472 S.E.2d 130 (1996).

Assault claim. — Claims of foster parents against the Department of Human Resources and a caseworker based on an assault committed by a teenage boy who was placed in the parents' home were precluded by the exception for losses caused by assault and battery. *Sherin v. Department of Human Resources*, 229 Ga. App. 621, 494 S.E.2d 518 (1998).

Court rejected the plaintiff's contention that O.C.G.A. § 50-21-24(7) did not bar plaintiff's claim against the defendant college because the claim was based not upon the rape by a fellow student, which the plaintiff described as "incidental," but upon the breach of the affirmative duty the defendant undertook to protect the plaintiff while in the care of the school. *Georgia Military College v. Santamorena*, 237 Ga. App. 58, 514 S.E.2d 82 (1999).

In determining whether the exception to state liability in O.C.G.A. § 50-21-24(7) applies, a court's focus is not on which particular state law causes of action a plaintiff has set forth in a complaint, but rather on the underlying conduct that allegedly caused the plaintiff's loss. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Any alleged losses arising out of conduct that would constitute the common law tort of assault or battery upon a plaintiff's person fall within the exception to state liability found in O.C.G.A. § 50-21-24(7), irrespective of what particular state law causes of action the plaintiff brings in order to recover for those losses, including state constitutional claims. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

When a citizen alleged that a state trooper sexually assaulted the citizen during a traffic stop, and the trooper was found to be immune from liability under O.C.G.A. § 50-21-25(a) because any alleged assault would have occurred while the trooper was

performing official duties, the Georgia State Patrol and the Department of Public Safety could not be held liable under the state's waiver of sovereign immunity because O.C.G.A. § 50-21-24(7) provided that the state had no liability for losses resulting from assault and battery, such as alleged by the citizen, and this exception to immunity applied to all of the citizen's state law allegations arising from these facts, including claims of mental and emotional anguish and harm, assault under color of state law, violating state constitutional rights, negligence, or deliberate indifference in hiring, instruction, supervision, control, and discipline of the trooper, or acquiescence to the trooper's conduct. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Battery. — In an action against a community service board arising from the beating of a resident in a residential home sponsored by the defendant, because the act causing the underlying loss constituted a battery, the exception in O.C.G.A. § 50-21-24(7) to the waiver of sovereign immunity applied. *Youngblood v. Gwinnett Rockdale Newton Community Serv. Bd.*, 273 Ga. 715, 545 S.E.2d 875 (2001).

3. Law Enforcement

No liability for not interfering with arrests. — The decision of police officers not to interfere with the arrests of the plaintiffs called for a consideration of discretion and liability therefor was barred by sovereign immunity. *Rhoden v. Department of Pub. Safety*, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Decision to arrest not "negligence." — It would have defied logic to classify the decision of police officers to arrest the plaintiffs, or the alleged use of excessive force therein, as "negligence". Any losses arising from such actions were caused by intentional acts and the state has no liability for such losses. *Rhoden v. Department of Pub. Safety*, 221 Ga. App. 844, 473 S.E.2d 537 (1996).

Failure to provide law enforcement exception. — In an action arising from injuries to plaintiffs in a collision with a truck stolen by an escaped prison inmate, an allegation that the correction officer negligently supervised the work detail from which the inmate escaped amounted to a failure to provide law enforcement services within the meaning of

O.C.G.A. § 50-21-24. *Long v. Hall County Bd. of Comm'rs*, 219 Ga. App. 853, 467 S.E.2d 186 (1996).

Trooper's pursuit of a speeding vehicle falls within the parameters of O.C.G.A. § 50-21-24(6) as a "method of providing law enforcement." *Hilson v. State, Dep't of Pub. Safety*, 236 Ga. App. 638, 512 S.E.2d 910 (1999).

Because police officers followed procedures in pursuing an individual in a high-speed chase, the officers did not violate O.C.G.A. § 40-6-6; consequently, because O.C.G.A. § 50-21-24(6) provided the Georgia Department of Public Safety (DPS) with immunity from liability for injuries resulting from the pursuit, the trial court properly granted summary judgment to the DPS. *Blackston v. Ga. Dep't of Pub. Safety*, 274 Ga. App. 373, 618 S.E.2d 78 (2005).

Accident caused by preventable negligence made law enforcement exception inapplicable. — In a personal injury suit brought by a driver who was rear-ended by a state trooper conducting radar detecting to catch speeders and using the driver's mail truck as a block, the trial court properly denied summary judgment to the Department of Public Safety because the record established evidence that the accident was preventable, and that, therefore, the exception set forth in O.C.G.A. § 50-21-24(6) to sovereign immunity may be overcome by the driver at trial. By following too closely and not paying attention, the situation presented preventable negligence as opposed to a policy decision on the part of the trooper. *Dep't of Pub. Safety v. Davis*, 289 Ga. App. 21, 656 S.E.2d 178 (2007).

State public safety department was not immune from liability under O.C.G.A. § 50-21-24(6) for an accident which was caused when a trooper collided with a motorist's truck while the trooper was running radar using the truck as cover because the trooper's actions were not a policy decision, but rather simple, preventable negligence while implementing a non-defective policy. *Ga. Dep't of Pub. Safety v. Davis*, Ga. App., 676 S.E.2d 1, 2009 Ga. LEXIS 99 (2009).

Operation of a state or county correctional institute and the related supervision of convicts on outside work details, including the degree of training and supervision provided to officers, was a discretionary

Application (Cont'd)**3. Law Enforcement** (Cont'd)

function of the Georgia Department of Corrections and, through it, the county warden. *Bontwell v. Department of Cors.*, 226 Ga. App. 524, 486 S.E.2d 917 (1997).

Death of inmate by cell mate. — A parent's wrongful death suit against a prison where the parent's adult child was incarcerated was properly dismissed by the trial court as the suit was barred by the waiver of sovereign immunity set forth in the Georgia Tort Claims Act, O.C.G.A. § 50-21-24(7), since the adult child was killed as a result of an assault and battery committed by a cell mate. *Southerland v. Ga. Dep't of Corr.*, 293 Ga. App. 56, 666 S.E.2d 383 (2008).

Parole board immune. — Defense of sovereign immunity applies to a complaint against the parole board and the board's former chairman acting in an official capacity. *Mosier v. State Bd. of Pardons & Paroles*, 213 Ga. App. 545, 445 S.E.2d 535 (1994), cert. denied, 5 U.S. 1040, 115 S. Ct. 1409, 131 L. Ed. 2d 295 (1995).

Parole officer's duties not subject to liability. — Parole officer's duties under O.C.G.A. § 42-9-48(d) are discretionary within the meaning of the Georgia Tort Claims Act (O.C.G.A. § 50-21-20 et seq.), and therefore not subject to liability. *Rowe v. State Bd. of Pardons & Paroles*, 240 Ga. App. 163, 523 S.E.2d 40 (1999).

4. Others

Physician whose license was temporarily suspended could not file suit against the state for actions of officers of the Board of Medical Examiners relating to the suspension. *Howard v. Miller*, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Inspections exception. — To the extent that plaintiff's claims stated the Department of Human Resources was negligent in conducting or failing to conduct adequate inspections of a personal care home, the department was entitled to summary judgment on the basis of sovereign immunity under the inspection exception. *Bruton v. State Dep't of Human Resources*, 235 Ga. App. 291, 509 S.E.2d 363 (1998).

O.C.G.A. § 50-21-24(8) applies not only to inspection powers and functions imposed by the legislature but also to inspection duties

voluntarily assumed by the state pursuant to a contractual relationship; thus, since the plaintiff alleged that the Department of Transportation violated a duty to notify a county that a road as designed and as constructed by the county contained safety hazards, the duty involved an inspection power or function for which the department was immune under the statute. *Magueur v. DOT*, 248 Ga. App. 575, 547 S.E.2d 304 (2001).

Georgia Department of Transportation (DOT) had sovereign immunity under the inspection powers exception of O.C.G.A. § 50-21-24(8); the injured party claimed that injuries sustained due to a detour sign blocking a stop sign were the result of DOT approval of a contractor's traffic control plan and inspection of the detour route; DOT delegated responsibility to place the traffic control devices on a county road to the contractor. *Comanche Constr., Inc. v. DOT*, 272 Ga. App. 766, 613 S.E.2d 158 (2005).

When an injured party sued the Georgia Department of Transportation for injuries received in a single-car accident on a county road, under a theory of negligent inspection, the claim was barred by O.C.G.A. § 50-21-24(8), which provided an exception to state liability with respect to inspection powers or functions. *Ogles v. E.A. Mann & Co.*, 277 Ga. App. 22, 625 S.E.2d 425 (2005).

Department of Natural Resources. — O.C.G.A. § 50-21-24(6) allowed the DNR director or an authorized agent the authority to ensure that the owner brought the owner's property into compliance with the environmental regulations. *Price v. State*, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

State was not liable for losses incurred from Department of Natural Resources' inspection of party's property; DNR was immune from liability pursuant to the inspection powers or functions exception to the state's limited waiver of sovereign immunity. *Price v. State*, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

College officials. — Because in meetings and at all other relevant times college officials were engaged in the performance of their official duties, under O.C.G.A. § 50-21-25(a), the officials had state tort immunity for statements the officials may have made at those meetings concerning the reasons for a teacher's dismissal, and for

actions taken to effect the teacher's dismissal. *Tootle v. Cartee*, 280 Ga. App. 428, 634 S.E.2d 90 (2006).

Licensing powers or functions exception.

— Administrative and judicial action taken by the Department of Human Resources to enforce mandates set out in the Child Support Recovery Act, O.C.G.A. § 19-11-1 et seq., clearly fell within the exceptions to waiver of sovereign immunity. *Department of Human Resources v. Money*, 222 Ga. App. 149, 473 S.E.2d 200 (1996).

DOT was exempt from liability for any losses attributed to either the DOT's issuing a permit to a shopping center owner to build a commercial driveway across from the median opening where an accident occurred or attributable to the alleged delay in issuing a city permit to install a traffic signal at that driveway. *DOT v. Cox*, 246 Ga. App. 221, 540 S.E.2d 218 (2000).

Where the assisted living facility owner claimed that the Georgia Department of Human Resources and the Georgia Department of Medical Assistance were liable under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., for relocating the owner's residents to other facilities and for terminating the owner's Medicaid provider status, and the departments later rescinded these actions, the departments were immune under O.C.G.A. § 50-21-24(9), because removal of the residents constituted an action by one department in response to the other department's revocation of the owner's Medicaid authorization, which was a licensing power or function. *Smith v. Dep't of Human Res.*, 257 Ga. App. 33, 570 S.E.2d 337 (2002).

Immunity of school teacher. — Summary judgment based on official immunity for a school teacher sued over a student's death was proper as certain school employees were immune from liability for supervising students on a school bus and the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., was inapplicable. *Aliffi v. Liberty County Sch. Dist.*, 259 Ga. App. 713, 578 S.E.2d 146 (2003).

Malpractice. — Trial court properly denied the Department of Transportation's

motion in abatement, as plaintiffs, with their affidavit and deposition of their expert witness, carried their burden of proof by showing the Department's design and engineering malpractice, and proof of malpractice was also proof of the waiver of sovereign immunity under O.C.G.A. § 50-21-24(10). *DOT v. Dupree*, 256 Ga. App. 668, 570 S.E.2d 1 (2002).

Controlled burn by Georgia Forestry Commission. — Upon certiorari review by the Supreme Court of Georgia, the court held that the exception to the sovereign immunity waiver authorized the application of immunity to the making of policy decisions by state employees and officers including those relating to the amount, disbursement, and use of equipment and personnel to provide law enforcement, police or fire protection services, and to the acts and omissions of state employees and officers executing and implementing those policies; thus, inasmuch as this rationale was at odds with that of the Court of Appeals of Georgia in its prior decision that the employee's claim as to the Commission's allegedly deficient notice to other governmental entities of a visibility hazard did not fall within the fire protection exception to the general waiver of sovereign immunity, remand to the trial court was ordered for it to proceed in a manner consistent with the Supreme Court's opinion. *Ga. Forestry Comm'n v. Canady*, 281 Ga. App. 505, 637 S.E.2d 212 (2006).

State director. — In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. *Ford v. Caffrey*, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Cited in *Miller v. Department of Pub. Safety*, 221 Ga. App. 280, 470 S.E.2d 773 (1996); *Feist v. Dirr*, 271 Ga. App. 169, 609 S.E.2d 111 (2004).

RESEARCH REFERENCES

ALR. — Claims arising from governmental conduct causing damage to plaintiff's real property as within discretionary function exception of federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 167 ALR Fed. 1.

Liability of United States for failure to warn of danger or hazard not directly created by act or omission of federal government and not in national parks as affected by "discretionary function or duty" exception to Federal Tort Claims Act, 169 ALR Fed. 421.

Liability of United States for failure to warn local police or individuals of discharge, release, or escape of person who is deemed dangerous to public as affected by "discretionary function or duty" exception to Federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 170 ALR Fed. 365.

Liability of United States for failure to warn local police or individuals of discharge, release, or escape of person who is deemed dangerous to public as affected by "discretionary act or duty" exception to Federal Tort Claims Act, 171 ALR Fed. 655.

Claims arising from conduct of governmental employer in administering or failing to administer medical care as within discretionary function exception of Federal Tort Claims Act (28 U.S.C.A. § 2680(a)), 172 ALR Fed. 407.

Liability of United States, under Federal Tort Claims Act (28 U.S.C.A. §§ 1346, 2680), for damages caused by ingestion or administration of government-approved drugs, vaccines, and medications, 173 ALR Fed. 431.

Construction and application of Federal Tort Claims Act (FTCA) exception in 28 U.S.C.A. § 2680(c), concerning claims arising in respect of assessment or collection of any tax or customs duty, or detention of goods or merchandise by any officer of customs or excise or any other law-enforcement officer, 173 ALR Fed. 465.

50-21-24.1. Workers' compensation exclusive remedy not waived; workers' compensation fund to pay claims.

This article does not waive the workers' compensation exclusive remedy when state employees are injured on the job. The workers' compensation fund shall pay claims for job related injuries and not the State Tort Claims Trust Fund. (Code 1981, § 50-21-24.1, enacted by Ga. L. 1994, p. 1717, § 11; Ga. L. 1998, p. 128, § 50.)

50-21-25. Immunity of state officers or employees for acts within scope of official duties or employment; officer or employee not named in action against state; settlement or judgment.

(a) This article constitutes the exclusive remedy for any tort committed by a state officer or employee. A state officer or employee who commits a tort while acting within the scope of his or her official duties or employment is not subject to lawsuit or liability therefor. However, nothing in this article shall be construed to give a state officer or employee immunity from suit and liability if it is proved that the officer's or employee's conduct was not within the scope of his or her official duties or employment.

(b) A person bringing an action against the state under the provisions of this article must name as a party defendant only the state government entity for which the state officer or employee was acting and shall not name the state officer or employee individually. In the event that the state officer or employee is individually named for an act or omission for which the state is

liable under this article, the state government entity for which the state officer or employee was acting must be substituted as the party defendant.

(c) A settlement or judgment in an action or a settlement of a claim under this article constitutes a complete bar to any further action by the claimant against a state officer or employee or the state by reason of the same occurrence. (Code 1981, § 50-21-25, enacted by Ga. L. 1992, p. 1883, § 1.)

Law reviews. — For note, “Finding Immunity: Manders v. Lee and the Erosion of 1983 Liability,” see 55 Mercer L. Rev. 1505 (2004).

JUDICIAL DECISIONS

O.C.G.A. § 50-21-25(a) is not unconstitutional on the grounds that the statute exceeds the scope of the voter approved constitutional ballot amendment which authorized the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Riddle v. Ashe*, 269 Ga. 65, 495 S.E.2d 287 (1998).

O.C.G.A. § 50-21-25(a) does not violate equal protection by creating a class of citizens who are denied the right to seek recovery from persons who injure them. *Riddle v. Ashe*, 269 Ga. 65, 495 S.E.2d 287 (1998).

Only government entities protected by Act. — In an action on a note brought by the Georgia Higher Education Assistance Corporation, defendant's tort counterclaim was not barred by the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., since a corporation cannot be a “state officer or employee,” and plaintiff was not one of the state government entities referred to in O.C.G.A. § 50-21-25. *Garrett v. Georgia Higher Educ. Assistance Corp.*, 217 Ga. App. 415, 457 S.E.2d 677 (1995).

Abusive foster parents not state actors under 42 U.S.C. § 1983. — The district court erred in holding defendants were state actors for purposes of 42 U.S.C. § 1983 under the lexis/joint access test because as private parties plaintiffs' conduct as allegedly abusive foster parents was not “symbiotic” with that of the state and the state's role did not amount to that of a “joint participant” with the plaintiffs in the context of child abuse. *Rayburn v. Hogue*, 241 F.3d 1341 (11th Cir. 2001).

Limited immunity. — The Tort Claims Act, O.C.G.A. § 50-21-20 et seq., provides limited, rather than blanket, immunity from

suit. *Riddle v. Ashe*, 269 Ga. 65, 495 S.E.2d 287 (1998).

Employees entitled to official immunity. — Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Coultas v. Dunbar*, 220 Ga. App. 54, 467 S.E.2d 373 (1996); *Brooks v. Barry*, 223 Ga. App. 648, 478 S.E.2d 616 (1996), cert. denied, 522 U.S. 899, 118 S. Ct. 246, 139 L. Ed. 2d 176 (1997).

Determination by a state hospital whether a mental patient was a candidate for discharge to a personal care home was a discretionary function. *Northwest Ga. Regional Hosp. v. Wilkins*, 220 Ga. App. 534, 469 S.E.2d 786 (1996).

Caseworker and supervisor in the Department of Family and Children Services acted within the scope of their official duties in the placement and supervision of children in a foster home and, thus, were entitled to official immunity. *Miracle by Miracle v. Spooner*, 978 F. Supp. 1161 (N.D. Ga. 1997).

Psychiatrist working for a state agency was entitled to immunity since the psychiatrist was sued only in an official capacity since the plaintiff never claimed that the psychiatrist treated the decedent as a private-pay patient. *Board of Regents v. Frost*, 233 Ga. App. 692, 505 S.E.2d 236 (1998).

Defendants were immune from liability in an action for wrongful termination from employment because the cause of action arose after the statute's effective date, the defendants were state employees, and they were both acting within the scope of their

employment duties when they fired the plaintiff. *Wang v. Moore*, 247 Ga. App. 666, 544 S.E.2d 486 (2001).

Correctional officers' actions in requiring a student on a prison tour, who had disobeyed prison instructions, to do push-ups was within the scope of their official duties as they were responsible to control the tour participants and to restrain and discipline any uncooperative participants by requiring push-ups and by using verbal means or physical force. *Herndon v. Mosley*, 257 Ga. App. 495, 571 S.E.2d 491 (2002).

Trial court properly denied the port authority employee's motion to dismiss the ship owner's claims for contribution or indemnity as a state law tort claim was prohibited against the employee for tortious acts committed while acting within the scope of employment and whether the employee was so acting was a question of fact which could not be resolved on a motion to dismiss the cross-claim for contribution or indemnity filed against the employee. *Ga. Ports Auth. v. Andre Rickmers Schiffsbeteiligungsges mbH & Co. K.G.*, 262 Ga. App. 591, 585 S.E.2d 883 (2003).

Trial court incorrectly denied a prison official's motion for summary judgment on the estate administrators' state causes of action, following the death of an inmate who overdosed on Tylenol, because the administrators failed to prove that the official was acting outside the scope of the person's official duties or employment; consequently, even if the official acted with malice or intent to injure the decedent, the official was immune from liability on the administrators' state law claims against the official. *Minor v. Barwick*, 264 Ga. App. 327, 590 S.E.2d 754 (2003).

Allegations by the nursery owners that a state university professor acted intentionally or willfully did not remove the professor from the scope of the professor's state employment for purposes of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. (GTCA), and, thus, the state university professor was protected by sovereign immunity and the GTCA from liability arising out of claims about what would happen to certain royalties related to plant cuttings the nursery owners gave to the professor and which the professor concluded had vast commercial potential. *Feist v. Dirr*, 271 Ga. App. 169, 609 S.E.2d 111 (2004).

Trial court properly granted summary judgment to a prison doctor in a medical malpractice action on behalf of a deceased patient/inmate as the doctor worked for the Board of Regents of the University System of Georgia, rather than for the Georgia Department of Corrections, and the doctor was not a proper party defendant under O.C.G.A. § 50-21-25 as the Board should have been served and named as the proper party. *Green v. Cent. State Hosp.*, 275 Ga. App. 569, 621 S.E.2d 491 (2005).

Merely styling a suit against a public officer as one brought against the officer personally does not deprive the officer of any immunity to which the officer might otherwise be entitled for the officer's official acts under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

If a state employee acts in the prosecution of and within the scope of the employee's official duties, intentional wrongful conduct comes within and remains within the scope of employment, and even when a plaintiff alleges a state constitutional violation, if the underlying conduct complained of is tortious and occurred within the scope of the state employee's official duties, the employee is protected by official immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

When a citizen alleged that a state trooper sexually assaulted the citizen during a traffic stop, the trooper was immune from liability under O.C.G.A. § 50-21-25(a) because the only alleged contact between the citizen and the trooper occurred during the traffic stop so any alleged assault would have occurred while the trooper was performing official duties, making the trooper immune from alleged state constitutional violations arising from the same facts. *Davis v. Standifer*, 275 Ga. App. 769, 621 S.E.2d 852 (2005).

Because in meetings and at all other relevant times college officials were engaged in the performance of their official duties, under O.C.G.A. § 50-21-25(a), the officials had state tort immunity for statements the officials may have made at those meetings concerning the reasons for a teacher's dismissal, and for actions taken to effect the teacher's dismissal. *Tootle v. Cartee*, 280 Ga. App. 428, 634 S.E.2d 90 (2006).

In a state employee's suit asserting defamation against a state director, the trial court properly granted the director summary judgment and dismissed the complaint as the records established that the director was a state employee at the time the alleged statements were made and, therefore, any libelous or slanderous statements were made by the director within the scope of the director's official duties and, thus, the director was immune from liability. *Ford v. Caffrey*, 293 Ga. App. 269, 666 S.E.2d 623 (2008).

Based on O.C.G.A. § 9-2-61, an arrestee's excessive force claim against a sheriff's major in the major's individual capacity was revived after a voluntary dismissal but assuming that the complaint alleged actual malice under Ga. Const. 1983, Art. I, Sec. II, Para. IX(d), as to the major's conduct, the tort claim had to be brought against the state under O.C.G.A. § 50-21-25(b); however, the state did not waive the state's sovereign immunity under O.C.G.A. § 50-21-23(b) for such claim to be brought in federal court. *Jude v. Morrison*, 534 F. Supp. 2d 1365 (N.D. Ga. 2008).

University employees entitled to immunity. — Because two university workers acted within the scope of their employment by following university policy in reporting an alleged inappropriate relationship between the workers' former boss and a university official, an invasion of privacy claim asserted against the workers by that former boss should have been dismissed since such was barred by the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and sovereign immunity. *Massey v. Roth*, 290 Ga. App. 496, 659 S.E.2d 872 (2008).

Cause of action under statute precluded federal due process claim. — If a county sheriff's investigator and another county official actively participated in the theft of an arrestee's property, then the arrestee was free to pursue a tort cause of action against those officials under Georgia law; consequently, the arrestee's allegations did not state a claim for relief under the due process clause of U.S. Const., amend. 14, given that state law provided an adequate remedy for the alleged theft of the arrestee's property. *Shouse v. Ursitti*, F. Supp. 2d , 2006 U.S. Dist. LEXIS 32409 (M.D. Ga. May 23, 2006).

Commissioner of Department of Human Resources was entitled to immunity under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Dollar v. Olmstead*, 232 Ga. App. 520, 502 S.E.2d 472 (1998).

University administrators entitled to immunity. — Despite allegations that the university's actions in denying tenure to plaintiff were motivated by malice and ill-intent, defendants' actions were squarely within the confines of the defendants' official duties as university administrators, and the defendants were entitled to immunity under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Hardin v. Phillips*, 249 Ga. App. 541, 547 S.E.2d 565 (2001).

Supervisor for state was immune from personal liability for alleged intentional or malicious tort committed in the performance of the supervisor's official duties; there was no exemption from O.C.G.A. § 50-21-25(a) for acts motivated by malice or an intent to injure. *Ridley v. Johns*, 274 Ga. 241, 552 S.E.2d 853 (2001).

Community service boards not part of DHR. — Legislature did not intend for community service boards to be part of the Department of Human Resources (DHR) or its employees to be department employees, under ordinary circumstances; a suit claiming that DHR was liable for the alleged negligence of a board employee should have been dismissed. *Dep't of Human Res. v. Crews*, 278 Ga. App. 56, 628 S.E.2d 191 (2006).

Inmate's state law battery claim against a correctional officer was barred because it was clear from the complaint that the alleged battery arose from the officer's official duties. *Mattox v. Bailey*, 221 Ga. App. 546, 472 S.E.2d 130 (1996).

Physician whose license was temporarily suspended could not file suit against officers of the Board of Medical Examiners or other state employees for their actions relating to the suspension. *Howard v. Miller*, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Physician treating private pay patient. — State-employed physician was not acting in the course of official duties in the treatment of a private-pay patient and was not immune from suit under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *Keenan v. Plouffe*, 267 Ga. 791, 482 S.E.2d 253 (1997).

Notice held adequate despite being provided to incorrect agency. — Trial court

erred by dismissing a plaintiff's negligence complaint since the plaintiff complied with the plain language of the ante litem notice provision of the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-26, even though, due to error on the plaintiff's part, the actual responsible agency was not provided with ante litem notice within the 12-month period; there was no evidence that the State of Georgia suffered any prejudice therefrom. *Cummings v. Ga. Dep't of Juvenile Justice*, 282 Ga. 822, 653 S.E.2d 729 (2007).

Cited in *McGee v. State*, 227 Ga. App. 107, 487 S.E.2d 671 (1997); *Department of Human Resources v. Coley*, 247 Ga. App. 392, 544 S.E.2d 165 (2000); *McCall v. Dep't of Human Res.*, 176 F. Supp. 2d 1355 (M.D. Ga. 2001); *Fedorov v. Bd. of Regents for Univ. of Georgia*, 194 F. Supp. 2d 1378 (S.D. Ga. 2002); *Nat'l Ass'n of Bds. of Pharm. v. Bd. of Regents of the Univ. Sys. of Ga.*, ___ F. Supp. 2d ___, 2008 U.S. Dist. LEXIS 32116 (M.D. Ga. Apr. 18, 2008).

RESEARCH REFERENCES

ALR. — Liability of municipality or other governmental unit for failure to provide police protection from crime, 90 ALR5th 273.

50-21-26. Notice of claim against state; time for commencement of action; examination of records to facilitate investigation of claims; confidential nature of documents and information furnished.

(a) No person, firm, or corporation having a tort claim against the state under this article shall bring any action against the state upon such claim without first giving notice of the claim as follows:

(1) Notice of a claim shall be given in writing within 12 months of the date the loss was discovered or should have been discovered; provided, however, that for tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, notice of claim shall be given in writing within 12 months after July 1, 1992;

(2) Notice of a claim shall be given in writing and shall be mailed by certified mail or statutory overnight delivery, return receipt requested, or delivered personally to and a receipt obtained from the Risk Management Division of the Department of Administrative Services. In addition, a copy shall be delivered personally to or mailed by first-class mail to the state government entity, the act or omissions of which are asserted as the basis of the claim. Each state government entity may designate an office or officer within that state government entity to whom a notice of claim is to be delivered or mailed;

(3) No action against the state under this article shall be commenced and the courts shall have no jurisdiction thereof unless and until a written notice of claim has been timely presented to the state as provided in this subsection;

(4) Any complaint filed pursuant to this article must have a copy of the notice of claim presented to the Department of Administrative Services together with the certified mail or statutory overnight delivery receipt or receipt for other delivery attached as exhibits. If failure to attach such

exhibits to the complaint is not cured within 30 days after the state raises such issue by motion, then the complaint shall be dismissed without prejudice; and

(5) A notice of claim under this Code section shall state, to the extent of the claimant's knowledge and belief and as may be practicable under the circumstances, the following:

(A) The name of the state government entity, the acts or omissions of which are asserted as the basis of the claim; ~

(B) The time of the transaction or occurrence out of which the loss arose;

(C) The place of the transaction or occurrence;

(D) The nature of the loss suffered;

(E) The amount of the loss claimed; and

(F) The acts or omissions which caused the loss.

(b) No action may be commenced under this article following presentation of a notice of claim until either the Department of Administrative Services has denied the claim or more than 90 days have elapsed after the presentation of the notice of claim without action by the Department of Administrative Services, whichever occurs first.

(c) The Department of Administrative Services shall have the authority to examine and copy any records of any state government entity to facilitate the investigation of a claim. Each state government entity shall make available to the Department of Administrative Services, incidental to any investigation of a claim, all such records notwithstanding any other provision of law which designates such records as confidential or which prohibits disclosure of such records; provided, however, that the Department of Administrative Services shall be bound by such provision of law and shall not make further disclosure of such records except as permitted by such provision of law. The Department of Administrative Services may enforce the authority granted under this subsection by subpoena which may be enforced, upon application by the department, by the Superior Court of Fulton County, Georgia, in the same manner as subpoenas issued under Chapter 13 of this title, the "Georgia Administrative Procedure Act," may be enforced.

(d) Any document or information gathered or prepared by the Department of Administrative Services in connection with the investigation undertaken as a result of the notice of claim shall be considered privileged and confidential and shall not be subject to discovery by any claimant in any proceeding under this article except as otherwise provided by law. (Code 1981, § 50-21-26, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 1994, p. 1717, § 12; Ga. L. 1998, p. 128, § 50; Ga. L. 2000, p. 1589, § 3.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “July 1, 1992” was substituted for “the effective date of this article” in two places in paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 1993, a comma was substituted for the period following the first occurrence of “July 1” in paragraph (a)(1).

Pursuant to Code Section 28-9-5, in 2009, “that” was inserted following “however,” in paragraph (a)(1).

Editor’s notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey article discussing trial practice and procedure, see 52 Mercer L. Rev. 447 (2000). For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For annual survey of tort law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 59 Mercer L. Rev. 1 (2007). For survey article on trial practice and procedure, see 59 Mercer L. Rev. 423 (2007). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

JUDICIAL DECISIONS

Retroactivity. — Notice and service provisions of O.C.G.A. § 50-21-26 are procedural laws that could be applied retroactively to authorize dismissal of a claim against the Department of Transportation where the plaintiff did not serve the Director of the Risk Management Division of the Department of Administrative Services or mail a copy of the complaint to the Attorney General. *Henderson v. DOT*, 267 Ga. 90, 475 S.E.2d 614 (1996).

Local authorities. — Chatham Area Transit Authority is a local authority and, therefore, the Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not apply to the authority. *Holmes v. Chatham Area Transit Auth.*, 233 Ga. App. 42, 505 S.E.2d 225 (1998).

Condition precedent was necessary. — If a condition precedent to waiver of sovereign immunity was not satisfied, then the trial court lacked subject matter jurisdiction and no valid action was pending to toll the running of the statute of limitations. *Sylvester v. DOT*, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Substantial compliance inadequate. — Substantial compliance with the ante litem notice requirement is inadequate under the Tort Claims Act, O.C.G.A. § 50-21-20 et seq. *McGee v. State*, 227 Ga. App. 107, 487 S.E.2d 671 (1997).

Since the plaintiff did not give notice of a claim to the Risk Management Division of the state Department of Administrative Services, as specifically set forth in O.C.G.A.

§ 50-21-26, the plaintiff did not conform to the strict compliance requirements of that section, and plaintiff’s claim was properly dismissed under O.C.G.A. § 9-11-12(b)(1). *Kim v. DOT*, 235 Ga. App. 480, 510 S.E.2d 50 (1998).

Because an injured motorist sent ante litem notice of a negligence action against the Georgia Department of Transportation to the Commissioner of the Department of Administrative Services, rather than to the Risk Management Division of that department, as required by O.C.G.A. § 50-21-26, the notice did not meet the strict compliance requirements of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq.; the trial court properly granted the state’s motion to dismiss the complaint for lack of subject matter jurisdiction over the action. *Shelnutt v. Ga. DOT*, 272 Ga. App. 109, 611 S.E.2d 762 (2005).

Trial court erred in denying the motion to dismiss by the Georgia Department of Transportation as the ante litem notice sent by a guardian did not name the governmental entity whose acts or omissions were the basis for the injured party’s claims; substantial compliance with the Georgia Tort Claims Act, specifically O.C.G.A. § 50-21-26(a), did not waive sovereign immunity and the trial court lacked subject matter jurisdiction over the case. *Johnson v. E.A. Mann & Co.*, 273 Ga. App. 716, 616 S.E.2d 98 (2005).

Trial court did not err in granting the state transportation department’s motion to dismiss on the ground that sovereign immu-

nity barred the claimant's personal injury claim against the state because the claimant did not timely file a notice of claim as required by O.C.G.A. § 50-21-26(a) and substantial compliance was not sufficient to meet that statute's requirement of proper notice; since the claimant did not timely file the notice of claim, the trial court was not permitted to consider the claim because the state only waived the state's sovereign immunity to the extent of providing a limited time to file a claim against the state, and since the claimant did not meet that requirement the trial court lacked subject matter jurisdiction to entertain the claim. *Williams v. Ga. DOT*, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Actual receipt within period not required.

— An ante litem notice of claim mailed within 12 months from the date of loss satisfied the requirements of O.C.G.A. § 50-21-26; actual receipt of the notice by the state agency before the end of the 12-month period was not required. *Norris v. DOT*, 268 Ga. 192, 486 S.E.2d 826 (1997), rev'g *DOT v. Norris*, 222 Ga. App. 361, 474 S.E.2d 216 (1996), overruling *Hardy v. Candler County*, 214 Ga. App. 627, 448 S.E.2d 487 (1994).

Before suit can be filed against the state, ante litem notice is an essential condition precedent. *Horton v. Whitaker*, 238 Ga. App. 312, 518 S.E.2d 712 (1999).

Receipt not attached. — Injured party's suit against Georgia Department of Corrections was properly dismissed for lack of subject matter jurisdiction because the injured party failed to comply with the Georgia Tort Claims Act, O.C.G.A. § 50-21-26(a)(2); no certified mail receipt to the Georgia Department of Administrative Services was attached to the amended complaint and the receipt that was attached was an almost illegible customer copy of a United States Postal Service Express Mail label, which bore no signature and no information in the block designated for "delivery" and "signature of addressee or agent." *Baskin v. Ga. Dep't of Corr.*, 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Failure to send an ante litem notice to the state within 12 months of the date plaintiff's loss was discovered or should have been discovered barred plaintiff's action against the state. *Howard v. Miller*, 222 Ga. App. 868, 476 S.E.2d 636 (1996).

Personal injury plaintiff's notice of suit 20 months after date of loss was held untimely under O.C.G.A. § 50-21-26; thus, summary judgment in favor of university school board of regents was proper. Plaintiff could not rely on concealment per se absent evidence of fraud. *Clark v. Board of Regents of Univ. Sys.*, 250 Ga. App. 448, 552 S.E.2d 445 (2001).

Stone Mountain Memorial Association is a state department or agency for purposes of Ga. Const. 1983, Art. I, Sec. II, Para. IX and, accordingly, a former inmate was required to file an ante litem notice in accordance with the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., for asserting the inmate's negligence claim; as the inmate failed to file such required notice, the trial court's grant of summary judgment to the Association pursuant to O.C.G.A. § 9-11-56(c) was proper. *Gay v. Ga. Dep't of Corr.*, 270 Ga. App. 17, 606 S.E.2d 53 (2004).

After a truck driver became involved in an altercation with a Georgia Port Authority employee during a delivery and was barred from the Savannah River terminal for 30 days, the driver's claim under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., that the driver suffered severe economic loss as a result of being barred from the terminal was procedurally barred because the driver failed to comply with the Act's notice provision, O.C.G.A. § 50-21-26. *Gambell v. Ga. Ports Auth.*, 276 Ga. App. 115, 622 S.E.2d 464 (2005).

Statutory notice. — O.C.G.A. § 50-21-26(a)(2) placed no limitations on the persons allowed to make delivery of a notice of claim against the state, and thus delivery of appellee injured party's notice by an overnight air express company meant that valid notice of claim was served on the state. *Georgia Ports Auth. v. Harris*, 274 Ga. 146, 549 S.E.2d 95 (2001).

Trial court properly dismissed a former inmate's action against the Georgia Department of Correction because the inmate failed to strictly comply with O.C.G.A. § 50-21-26(a) because the inmate did not send a letter to that department, nor did the inmate provide the specifics as to the time, place, or nature of the inmate's injuries. *Camp v. Coweta County*, 271 Ga. App. 349, 609 S.E.2d 695 (2005), vacated in part, 280 Ga. App. 852, 635 S.E.2d 234 (2006).

Because: (1) a patron's personal injury

claim filed with the claims advisory board (CAB) in no way complied with the ante litem requirements of the Georgia Tort Claims Act; (2) the patron's claim to the CAB was made under a separate statutory scheme set up under Article 4 of Title 28 dealing with the financial affairs of the General Assembly, covered under O.C.G.A. § 28-5-60 et seq.; and (3) prior to filing suit, no notice was given to the risk management division of the Department of Administrative Services or the Department of Motor Vehicle Safety, to the extent that the trial court denied the motion of the state to dismiss the patron's claim of \$5,000 or less, the court erred, but the order denying the patron's claim of \$5,000 or more was upheld. *State of Ga. v. Haynes*, 285 Ga. App. 637, 647 S.E.2d 331 (2007).

Requirement of ante litem notice of claim under O.C.G.A. § 50-21-26 was satisfied by the mailing of notices to the Department of Corrections and to the Department of Administrative Services, by certified mail, return receipt requested, within the time required for providing notice. *Doe #102 v. Department of Cors.*, 268 Ga. 582, 492 S.E.2d 516 (1997), cert. denied, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

An ante litem notice signed by plaintiff's attorney and physically delivered to the Department of Administrative Services by Federal Express on the anniversary of the date of the injury, with a copy sent by regular mail to defendant, satisfied the requirements of O.C.G.A. § 50-21-26. *Georgia Ports Auth. v. Harris*, 243 Ga. App. 508, 533 S.E.2d 404 (2000).

Ante litem notice requirement was not void for vagueness. — Ante litem notice requirement contained in O.C.G.A. § 50-21-26(a) was not void for vagueness since there was no dispute about when the time period began to run on the limitations period for filing against the state; thus, the trial court properly dismissed the claimant's personal injury claim against the state filed 14 months after the claimant was allegedly injured in a car accident because the date of the accident was the date the "loss was discovered or should have been discovered." *Williams v. Ga. DOT*, 275 Ga. App. 88, 619 S.E.2d 763 (2005).

Failure to set forth amount of claim in ante litem notice. — The dismissal of a

plaintiff's negligence suit against a college was properly dismissed for lack of subject matter jurisdiction since the plaintiff's ante litem notice failed to set forth the amount of loss claimed, as required by O.C.G.A. § 50-21-26(a)(5)(E), and prior correspondence sent to the college by the plaintiff with a demand amount could not be considered part of the ante litem notice since the ante litem notice had to be contained within one document and the letter was not sent via certified mail. *Perdue v. Athens Tech. College*, 283 Ga. App. 404, 641 S.E.2d 631 (2007).

Notice. — Since the student's letter was inadequate notice and was not sent via approved means, the trial court correctly dismissed the suit for a claim for injuries received on a university campus. *Dempsey v. Bd. of Regents of Univ. Sys. of Ga.*, 256 Ga. App. 291, 568 S.E.2d 154 (2002).

Notice of a wrongful death action. — The ante litem notice sent by the husband of a breast cancer victim was not sufficient to give the designated state agencies adequate notice of his wrongful death claim because the notice was sent before his wife's death, and while it identified her claim for pain and suffering allegedly caused by the failure of a nurse employed by the state to identify or treat the wife's condition or to refer her to a physician for treatment, as well as the husband's claim for loss of consortium, it did not provide notice of a wrongful death claim. *Williams v. Department of Human Resources*, 234 Ga. App. 638, 507 S.E.2d 230 (1998). See *Williams v. Georgia Dep't of Human Resources*, 272 Ga. 624, 532 S.E.2d 401 (2000), aff'd, 272 Ga. 624, 532 S.E.2d 401 (2000).

An ante litem notice stating that the estates of deceased persons intended "to file a lawsuit against the State of Georgia and the Department of Transportation whose conduct is believed to have proximately caused the deaths of [deceased persons]" was not insufficient on the grounds that it did not specify that the surviving children would be bringing a claim. *Delson v. Georgia DOT*, 245 Ga. App. 100, 537 S.E.2d 381 (2000).

In a spouse's wrongful death suit against the Georgia Department of Transportation, the trial court did not err by dismissing the spouse's wrongful death claim based on the loss of an unborn child on the basis that the

spouse's ante litem notice was deficient as the spouse failed to provide any mention of the wrongful death claim arising from the loss of the unborn child in the notice. *DOT v. Baldwin*, 292 Ga. App. 816, 665 S.E.2d 898 (2008).

Amendment of complaint inadequate. — Injured party's attempt to amend a renewed complaint to attach copies of the letters and purported receipts required by the Georgia Tort Claims Act, O.C.G.A. § 50-21-26(a), was untimely as the amendment was filed one day beyond the 30-day requirement. *Baskin v. Ga. Dep't of Corr.*, 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Children. — The requirement that notice be given within 12 months is itself a statute of limitation subject to the general law with respect to statutes of limitation; thus, even though a parent's action as next friend of the child was subject to dismissal for failure to comply with the notice requirement, the child's status tolled the limitation and the action brought by the child's parent was not barred. *Howard v. State*, 226 Ga. App. 543, 487 S.E.2d 112 (1997).

Dismissal proper. — Trial court's dismissal of an injured party's renewed complaint was proper because, even though dismissal under O.C.G.A. § 50-21-26(a)(4) was without prejudice, the injured party had renewed the action once and could not, under O.C.G.A. § 9-2-61(a), do so again. *Baskin v. Ga. Dep't of Corr.*, 272 Ga. App. 355, 612 S.E.2d 565 (2005).

Because the injured parties sent their ante litem notice to the commissioner of the Department of Administrative Services (DOAS) instead of the Risk Management Division of DOAS, as required by O.C.G.A. § 50-21-26(a), the trial court properly dismissed the suit for lack of subject matter jurisdiction. *Welch v. Ga. DOT*, 276 Ga. App. 664, 624 S.E.2d 177 (2005).

Notice held adequate despite being provided to incorrect agency. — Trial court erred by dismissing a plaintiff's negligence complaint since the plaintiff complied with the plain language of the ante litem notice provision of the Georgia Tort Claims Act (GTCA), O.C.G.A. § 50-21-26, even though,

due to error on the plaintiff's part, the actual responsible agency was not provided with ante litem notice within the 12-month period; there was no evidence that the State of Georgia suffered any prejudice therefrom. *Cummings v. Ga. Dep't of Juvenile Justice*, 282 Ga. 822, 653 S.E.2d 729 (2007).

Adequate compliance with ante litem notice. — With regard to a trial court partially granting the Georgia Department of Transportation's motion to dismiss the complaint asserting damages from flooding brought by certain property owners, since the property owners did not know the precise times of the reportedly nearly constant flooding events at the property and given the contents of the notice, the continuing nature of the claims, and the inability to recall the specific times of the flooding incidents, the property owners complied with the plain language of the ante litem notice provisions. Under such circumstances, the trial court properly ruled that the property owners' claims were limited to damages for flooding occurring after a certain date since O.C.G.A. § 50-21-26(a)(1) required notice within 12 months of the date of the loss, or recovery was barred. *Savage v. E. R. Snell Contr., Inc.*, 295 Ga. App. 319, 672 S.E.2d 1 (2008).

Patient sued the Board of Regents of the University System of Georgia alleging the board failed to notify the patient that transfusions given at a college hospital might have exposed the patient to HIV. As the patient's ante-litem notice referenced the failure of state employees to take steps that would have led to an earlier detection of the patient's HIV infection, to the extent of the patient's knowledge and belief at the time the notice was given, the notice satisfied the requirements of O.C.G.A. § 50-21-26. *Bd. of Regents v. Canas*, 295 Ga. App. 505, 672 S.E.2d 471 (2009).

Cited in *Mattox v. Bailey*, 221 Ga. App. 546, 472 S.E.2d 130 (1996); *Brooks v. Barry*, 223 Ga. App. 648, 478 S.E.2d 616 (1996); *Premo v. Georgia Ports Auth.*, 227 Ga. App. 27, 488 S.E.2d 106 (1997); *Board of Regents v. Frost*, 233 Ga. App. 692, 505 S.E.2d 236 (1998); *Fedorov v. Bd. of Regents for Univ. of Georgia*, 194 F. Supp. 2d 1378 (S.D. Ga. 2002).

RESEARCH REFERENCES

ALR. — Waiver of, or estoppel to assert, against state or local political subdivision — failure to give or defects in notice of claim modern status, 64 ALR5th 519.

50-21-27. Retroactive operation; limitations of actions; applicability of other related statutes.

(a) It is the specific intent of the General Assembly that this article shall operate retroactively so as to apply to tort claims or causes of action which accrued on or after January 1, 1991. A tort claim or cause of action shall be deemed to have accrued on the date the loss was or should have been discovered. This article shall not apply to tort claims or causes of action which accrued prior to January 1, 1991.

(b) For tort claims and causes of action which accrued between January 1, 1991, and July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after July 1, 1992.

(c) For tort claims and causes of action which accrue on or after July 1, 1992, any tort action brought pursuant to this article is forever barred unless it is commenced within two years after the date the loss was or should have been discovered.

(d) Statutes of ultimate repose and abrogation, as provided for elsewhere in this Code, shall apply to claims and actions brought pursuant to this article.

(e) All provisions relating to the tolling of limitations of actions, as provided elsewhere in this Code, shall apply to causes of action brought pursuant to this article. (Code 1981, § 50-21-27, enacted by Ga. L. 1992, p. 1883, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, “July 1, 1992” was substituted for “the effective date of this article” in two places in subsection (b) and once in subsection (c).

JUDICIAL DECISIONS

Related statutes. — Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., does not expand the state’s exposure for federal civil rights actions beyond that provided in O.C.G.A. § 9-3-33. *Doe #102 v. Department of Cors.*, 268 Ga. 582, 492 S.E.2d 516 (1997), cert. denied, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

Claim accrued after effective date of Tort Claims Act. — Patient sued the Board of Regents of the University System of Georgia alleging the board failed to notify the patient that transfusions given at a college hospital

might have exposed the patient to HIV. As the patient did not discover the loss until after adoption of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., when the patient was diagnosed with AIDS, the patient had to show that the board waived the board’s sovereign immunity under the Act, not under the preexisting law. *Bd. of Regents v. Canas*, 295 Ga. App. 505, 672 S.E.2d 471 (2009).

Cited in *Datz v. Brinson*, 208 Ga. App. 455, 430 S.E.2d 823 (1993); *Sylvester v. DOT*, 252 Ga. App. 31, 555 S.E.2d 740 (2001);

Backensto v. Ga. DOT, 284 Ga. App. 41, 643 S.E.2d 302 (2007).

50-21-28. Venue of actions.

All tort actions against the state under this article shall be brought in the state or superior court of the county wherein the loss occurred; provided, however, that, in any case in which an officer or employee of the state may be included as a defendant in his individual capacity, the action may be brought in the county of residence of such officer or employee. All actions against the state for losses sustained in any other state shall be brought in the county of residence of any officer or employee residing in this state upon whose actions or omissions the claim against the state is based. (Code 1981, § 50-21-28, enacted by Ga. L. 1992, p. 1883, § 1.)

Law reviews. — For article, “Trial Practice and Procedure,” see 53 Mercer L. Rev. 475 (2001). For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

JUDICIAL DECISIONS

County of death controls. — Venue of a wrongful death action against the Department of Transportation arising from a highway auto accident was in the county where the death occurred, not where the accident took place. *Evans v. DOT*, 226 Ga. App. 74, 485 S.E.2d 243 (1997), *aff’d*, 269 Ga. 400, 499 S.E.2d 321 (1998).

Constitutionality. — O.C.G.A. § 50-21-28 does not violate Ga. Const. 1983, Art. VI, Sec. II, Par. IX, providing for venue in certain civil actions in the county where the defendant resides. *Campbell v. Department of Cors.*, 268 Ga. 408, 490 S.E.2d 99 (1997).

Enactment of O.C.G.A. § 50-21-28 was a valid exercise of the General Assembly’s authority pursuant to Ga. Const. 1983, Art. I, Sec. II, Para. IX, and establishes the proper venue in actions brought under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., against the state as the sole defendant. *Campbell v. Department of Cors.*, 268 Ga. 408, 490 S.E.2d 99 (1997).

O.C.G.A. § 50-21-28 establishes the proper venue in actions brought under the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., and against the state as the sole defendant. *Doe #102 v. Department of Cors.*, 268 Ga. 582, 492 S.E.2d 516 (1997), *cert. denied*, 523 U.S. 1047, 118 S. Ct. 1363, 140 L. Ed. 2d 512 (1998).

Venue limitation set forth in O.C.G.A. § 50-21-28 is constitutional even though it is inconsistent with the joint tortfeasor venue provision of the constitution; moreover, because it is a special venue provision that is controlling and exclusive because of its use of the word “shall,” it establishes the proper venue in tort actions against the state even when the state is not the sole tortfeasor. *Dean v. Tabsum, Inc.*, 272 Ga. 831, 536 S.E.2d 743 (2000).

Cited in *EHCA Cartersville, LLC v. Turner*, 280 Ga. 333, 626 S.E.2d 482 (2006).

50-21-29. Trial of actions; limitations on amounts of damages; caps to limit total damages regardless of the type claimed.

(a) Trial of tort actions against the state under this article shall be conducted by a judge with a jury; provided, however, the parties may agree that the same be tried by a judge without a jury.

(b)(1) Except as provided for in paragraph (2) of this subsection, in any action or claim for damages brought under the provisions of this article, no person shall recover a sum exceeding \$1 million because of loss arising from a single occurrence, regardless of the number of state government entities involved; and the state's aggregate liability per occurrence shall not exceed \$3 million. The existence of these caps on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article.

(2) In any action or claim for damages brought under the provisions of this article pursuant to Article 8 of Chapter 8 of Title 31, any caps specified under Code Section 51-13-1, notwithstanding any applicability limitations specified in such Code section, shall serve as a total cap of all damages, regardless of the type of damages claimed; provided, however, that in no event shall the state's liability exceed the limits provided for in paragraph (1) of this subsection. The existence of this cap on liability shall not be disclosed or suggested to the jury during the trial of any action brought under this article. (Code 1981, § 50-21-29, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2005, p. 1493, § 6/HB 166.)

JUDICIAL DECISIONS

Modification of cap was abuse of discretion. — Where a pretrial order stated that the damages cap in the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., would apply, the trial court abused the court's discretion by implicitly modifying the pretrial order to support a judgment in excess of the cap. *Dep't of Human Resources v. Phillips*, 268 Ga. 316, 486 S.E.2d 851 (1997).

Separate caps for plaintiff and employer not authorized. — There is no authority justifying adding to the \$1,000,000 per person cap just because a plaintiff was forced by operation of another law to reimburse plaintiff's employer for benefits it paid under the Longshore and Harbor Workers' Compensation

Act, U.S.C. Ch. 18, T. 33, before plaintiff secured a negligence judgment against the Georgia Ports Authority. *Georgia Ports Auth. v. Harris*, 243 Ga. App. 508, 533 S.E.2d 404 (2000).

Accrual of interest. — In a negligence action against the Department of Transportation, the court erred in entering judgment in excess of \$1 million, as allowed under O.C.G.A. § 50-21-29(b), and interest accrued on the \$1 million maximum allowable, not on the larger sum returned in the verdict. *DOT v. Cannady*, 230 Ga. App. 585, 497 S.E.2d 72 (1998), *aff'd*, 270 Ga. 427, 511 S.E.2d 173 (1999).

50-21-30. Punitive or exemplary damages or interest prior to judgment not allowed.

No award for damages under this article shall include punitive or exemplary damages or interest prior to judgment. (Code 1981, § 50-21-30, enacted by Ga. L. 1992, p. 1883, § 1.)

RESEARCH REFERENCES

ALR. — Right to prejudgment interest on punitive or multiple damages awards, 9 ALR5th 63.

50-21-31. Interest rate after judgment.

In all cases where judgment is obtained under this article, the judgment shall bear interest from the date judgment is entered at the rate of 7 percent per annum. (Code 1981, § 50-21-31, enacted by Ga. L. 1992, p. 1883, § 1.)

JUDICIAL DECISIONS

Interest on excessive judgments. — In a negligence action against the Department of Transportation, the court erred in entering judgment in excess of \$1 million, as allowed under O.C.G.A. § 50-21-29(b), and interest accrued on the \$1 million maximum allowable, not on the larger sum returned in the verdict. *DOT v. Cannady*, 230 Ga. App. 585, 497 S.E.2d 72 (1998), *aff'd*, 270 Ga. 427, 511 S.E.2d 173 (1999).

50-21-32. Signing of pleadings, motions, or other papers.

In any claim, action, or proceeding brought under this article, the signature of an attorney or party constitutes a certificate by him or her that he or she has read the pleading, motion, or other paper; that to the best of his or her knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Code section, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including reasonable attorneys' fees. (Code 1981, § 50-21-32, enacted by Ga. L. 1992, p. 1883, § 1.)

50-21-33. Liability insurance or self-insurance programs; State Tort Claims Trust Fund; premiums and deductibles; incentive programs authorized; merger of preexisting programs and funds; additional coverages.

(a) The Department of Administrative Services shall formulate and initiate a sound program providing for liability insurance, self-insurance, or

a combination of both to provide for payment of judgments and claims against the state under this article.

(b) The commissioner of administrative services shall have the authority to purchase policies of liability insurance or contracts of indemnity insuring or indemnifying the state against liabilities arising under this article. In addition or alternatively, the commissioner of administrative services may retain all moneys paid to the Department of Administrative Services by state government entities as premiums for insurance or indemnity against liabilities arising under this article, and all money specifically appropriated to the Department of Administrative Services for the payment of liabilities under this article, all moneys received as interest, and all funds received from other sources to set up and maintain a reserve fund for the payment of judgments and claims against the state under this article and for payment of the expenses necessary to properly administer a self-insurance program. Any amounts held by the State Tort Claims Trust Fund which are available for investment shall be paid over to the Office of Treasury and Fiscal Services. The director of the Office of Treasury and Fiscal Services shall deposit such funds in a trust account for credit only to the State Tort Claims Trust Fund. The director of the Office of Treasury and Fiscal Services shall invest such funds subject to the limitations of Code Section 50-5A-7 and Chapter 17 of this title. All income derived from such investments shall accrue to the State Tort Claims Trust Fund. When moneys are paid over to the Office of Treasury and Fiscal Services, as provided in this subsection, the commissioner shall submit an estimate of the date such funds shall no longer be available for investment. When the commissioner wishes to withdraw funds from the trust account provided for in this Code section, he or she shall submit a request for such withdrawal, in writing, to the director of the Office of Treasury and Fiscal Services. State agencies which provide services or incur expenses in connection with any claim covered by this article may receive payment from the fund for such services and expenses.

(c) Any reserve fund created under this Code section shall be designated the State Tort Claims Trust Fund.

(d) The Department of Administrative Services shall establish and charge to state government entities such premiums, deductibles, and other payments, taking into account any direct appropriations as shall be necessary to maintain the soundness of the insurance or self-insurance programs established under this Code section. The premiums and deductibles charged to each state government entity may be established on such basis as the Department of Administrative Services shall deem appropriate and such basis may include the number of employees, the aggregate annual budget of the state government entity, and unique exposures, loss history, or claims pending against such state government entity. The department is further authorized to establish incentive programs including but not limited to differential premium rates based on participation in loss control programs

established by the department, increased or decreased deductibles based on participation in loss control programs established by the department, and the imposition of fines and penalties. If any premiums, deductibles, fines, or penalties are unpaid, the department is authorized to deduct any unpaid amounts from the nonpaying agency's or authority's continuation budget subject to the approval of the Office of Planning and Budget and deposit those funds into the State Tort Claims Trust Fund provided for in this Code section.

(e) Each state government entity shall promptly remit from appropriations or other funds available to it the premium thus established.

(f) Where existing programs have previously been established by the Department of Administrative Services for the insurance or self-insurance of the state, state government entities, or state officers or employees, the commissioner of administrative services shall be authorized to merge all or part of those programs, including all or part of any self-insurance funds established thereunder, into the State Tort Claims Trust Fund. This shall include, but not be limited to, any funds established by Code Sections 45-9-4 and 50-5-16. In so doing, the Department of Administrative Services shall be authorized, through the State Tort Claims Trust Fund, to assume or not assume all or part of existing and potential liabilities of the prior established programs and funds.

(g) As to state government entities for which additional particular coverages are necessary, the Department of Administrative Services may provide such additional particular coverages and other terms and conditions of unique exposure particular to one or more state government entities; may provide for endorsements for contract liability; and, where necessary to the public purposes of the state government entity, may also provide for additional insureds.

(h) Nothing in this Code section or in this article shall impose or create any obligation upon other funds of the state.

(i) Funds appropriated to the Department of Administrative Services for the State Tort Claims Trust Fund shall be deemed contractually obligated funds held in trust, subject to future legislative change or revision, for the benefit of persons having claims, known or unknown, or judgments payable from the funds and shall not lapse. (Code 1981, § 50-21-33, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2000, p. 1474, § 12; Ga. L. 2008, p. 245, § 12/SB 425.)

The 2008 amendment, effective July 1, 2008, in subsection (d), inserted “, deductibles,” in the first sentence, inserted “and deductibles” near the beginning of the second sentence, and added the last two sentences.

50-21-34. Payment of claims or judgments; execution or levy against state funds or property prohibited; amount of fiscal year aggregate liability.

(a) No claim or judgment against the state under this article shall be payable except from the State Tort Claims Trust Fund or from any policies of insurance or contracts of indemnity provided under this article.

(b) Nothing in this article shall be construed to authorize any execution or levy against any state property or funds. Execution or levy against state property or funds is expressly prohibited.

(c) Judgments against the state under this article shall be promptly paid by the commissioner of administrative services within 60 days after the same become final if funds are available from the State Tort Claims Trust Fund or from other policies of insurance or contracts of indemnity established under this article.

(d) The fiscal year aggregate liability of the state under this article shall never exceed the amount of funds available from the State Tort Claims Trust Fund and any other policies of insurance or contracts of indemnity established under this article. For purposes of this Code section, the term "funds available from the State Tort Claims Trust Fund" means the cash balance in the fund less the department's operating expense allocation to the fund for the year. Any judgments obtained in excess of this limitation on annual aggregate liability will not be void. However, such excess judgments shall not be payable unless and until the General Assembly appropriates funds for the payment thereof. (Code 1981, § 50-21-34, enacted by Ga. L. 1992, p. 1883, § 1.)

50-21-35. Service of process; mailing of complaint.

In all civil actions brought against the state under this article, to perfect service of process the plaintiff must both: (1) cause process to be served upon the chief executive officer of the state government entity involved at his or her usual office address; and (2) cause process to be served upon the director of the Risk Management Division of the Department of Administrative Services at his or her usual office address. The time for the state to file an answer shall not begin to run until process has been served upon all required persons. A copy of the complaint, showing the date of filing, shall also be mailed to the Attorney General at his or her usual office address, by certified mail or statutory overnight delivery, return receipt requested and there shall be attached to the complaint a certificate that this requirement has been met. (Code 1981, § 50-21-35, enacted by Ga. L. 1992, p. 1883, § 1; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For annual survey of Administrative Law, see 57 Mercer L. Rev. 1 (2005). For annual survey of trial practice

and procedure, see 57 Mercer L. Rev. 381 (2005). For annual survey of tort law, see 58 Mercer L. Rev. 385 (2006). For survey article on administrative law, see 60 Mercer L. Rev. 1 (2008). For survey article on trial practice and procedure, see 60 Mercer L. Rev. 397 (2008).

JUDICIAL DECISIONS

Service on director required. — In an action against the Department of Corrections and Georgia Mental Health Institute, where only the deputy director of the Department of Risk Management, not the director, was served, the requirements of O.C.G.A. § 50-21-35 were not satisfied and the time for the defendants' answer had not commenced running. *Christensen v. State*, 219 Ga. App. 10, 464 S.E.2d 14 (1995).

In a slip and fall action against the Department of Corrections (DOC), failure of plaintiff to perfect service on the Director of Risk Management before the statute of limitation expired, knowing of the DOC's attack on the sufficiency of service, prevented plaintiff from establishing lack of fault for the delay. *Curry v. Georgia Dep't of Cors.*, 232 Ga. App. 703, 503 S.E.2d 597 (1998).

Failure to serve the director of the Risk Management Division did not comply with the condition precedent to waiver of sovereign immunity, and the state had no duty to respond to the first timely filed suit. *Sylvester v. DOT*, 252 Ga. App. 31, 555 S.E.2d 740 (2001).

Trial court properly granted summary judgment to the Georgia Department of Corrections (DOC) and a state prison in a medical malpractice action filed on behalf of a deceased patient/inmate as there was improper service on the state entities pursuant to O.C.G.A. § 50-21-35 because the prison was served through its warden and the DOC was served through its commissioner; rather, process should have been served on the Director of the Risk Management Division of the Department of Administrative Services. *Green v. Cent. State Hosp.*, 275 Ga. App. 569, 621 S.E.2d 491 (2005).

Civil Practice Act governs method of service. — O.C.G.A. § 50-21-35 does not provide the exclusive method for service of process on a state entity under the Georgia

Tort Claims Act; rather, O.C.G.A. § 9-11-4(e)(5), part of the Civil Practice Act, applies to claims brought under the Georgia Tort Claims Act, and accordingly service on a community board was not improper when the summons and complaint were not handed personally to the board's director. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 282 Ga. 339, 647 S.E.2d 566 (2007).

Failure to meet service requirements barred dismissal under § 9-2-5. — Because the Department of Transportation failed to show that service of process had been effectuated in an alleged prior pending personal injury suit filed in Brantley County, based on the same accident a driver sued upon in Wayne County, the Brantley County suit was not "pending," as that term was defined in O.C.G.A. § 9-2-5(a). Thus, the trial court erred in dismissing the driver's Wayne County suit. *Watson v. Ga. DOT*, 288 Ga. App. 40, 653 S.E.2d 763 (2007).

Cure of defect in mailing requirement. — Plaintiff should be allowed to cure a defect in the compliance with the mailing requirement so long as the delay in providing a copy of the complaint to the Attorney General did not cause any prejudice to the state; moreover, because no specific proscriptions against amendments to cure a defect in the O.C.G.A. § 50-21-35 requirements existed, an amendment should generally be allowed prior to the entry of a pretrial order, unless there was good reason to deny the amendment. *Camp v. Coweta County*, 280 Ga. 199, 625 S.E.2d 759 (2006).

Failure to meet service requirements did not require automatic dismissal. — Trial court erred in dismissing an injured party's personal injury action against a state agency because under the current precedent failure to meet the notice requirements of O.C.G.A. § 50-21-35 did not automatically require a dismissal and the injured party's act of

refiling the complaint under the renewal statute, O.C.G.A. § 9-2-61, was allowable under the circumstances. *Shiver v. DOT*, 277 Ga. App. 616, 627 S.E.2d 204 (2006).

Because the trial court dismissed a couple's damages complaint against the Department of Transportation arising out of a collision between their vehicle and a road sign without a clear finding as to whether actual prejudice was based on the expiration of the statute of limitations under O.C.G.A. § 50-21-27(c) or some other facts before the court, remand was ordered for the court to make that determination before resorting to dismissal. *Backensto v. Ga. DOT*, 284 Ga. App. 41, 643 S.E.2d 302 (2007).

Service on clerk of chief operating officer.

— An administratrix's acts of serving ante litem notice of the claims in a wrongful death action upon the clerk of a service provider's chief executive officer at the office address of the officer was sufficient under both O.C.G.A. §§ 9-11-4 and 50-21-35 to avoid summary judgment on this issue; moreover, the provider waived any service of process defense through its: (1) actual knowledge of the instant suit; (2) active participation in discovery; and (3) failure to show prejudice by any alleged defect in the service of process. *Summerlin v. Ga. Pines Cmty. Serv. Bd.*, 278 Ga. App. 831, 630 S.E.2d

115 (2006), *aff'd*, 282 Ga. 339, 647 S.E.2d 566 (2007).

Provision not jurisdictional. — Service of process provision of the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., is procedural in nature, not jurisdictional; thus, service of process could be waived. *Ga. Pines Cmty. Serv. Bd. v. Summerlin*, 282 Ga. 339, 647 S.E.2d 566 (2007).

Dismissal for failure to comply with section remanded for agency to show actual prejudice. — Absent evidence that the Department of Transportation demonstrated actual prejudice from a surviving spouse's failure to comply with O.C.G.A. § 50-21-35 by failing to timely amend a damages complaint with a certificate showing service upon the attorney general, a dismissal order was vacated, and the case was remanded. *Ingram v. DOT*, 286 Ga. App. 220, 648 S.E.2d 729 (2007).

Failure to include transcript. — Because a couple appealing the dismissal of their complaint against the Department of Transportation on the ground that the couple had not complied with O.C.G.A. § 50-21-35 had not included a transcript of the hearing on the motion to dismiss, the court had to affirm the trial court's finding of actual prejudice in dismissing the complaint. *Backensto v. Ga. DOT*, 291 Ga. App. 293, 661 S.E.2d 647 (2008).

50-21-36. Settlement of claims.

The commissioner of the Department of Administrative Services, or his or her delegate, shall have the authority, within the limits provided in this article, to make settlement of claims, causes of action, and actions under this article. (Code 1981, § 50-21-36, enacted by Ga. L. 1992, p. 1883, § 1.)

50-21-37. Hold harmless and indemnification agreements.

(a) If a state government entity enters into or is the beneficiary of any agreement under which a third party agrees to hold a state government entity or the State Tort Claims Trust Fund harmless or to indemnify a state government entity or the State Tort Claims Trust Fund, or to provide insurance for those purposes, then the third party or the insurer, as the case may be, shall be liable to the State Tort Claims Trust Fund in accordance with such agreement or contract of insurance, for reimbursement of the amount of any disbursements from the State Tort Claims Trust Fund in satisfaction of any liability, whether established by judgment or settlement in accordance with this article, to the extent of the hold harmless obligation

or requirement to procure insurance undertaken under such agreement or contract of insurance obtained pursuant to such agreement. The liability limits specified under Code Section 50-21-29 shall not be increased by the existence of hold harmless or indemnity obligations in such contractual agreements or by the obligation to procure insurance for such purposes or by the limits set forth in any such contractual agreement or contract of insurance procured pursuant thereto.

(b) No policy of insurance shall be delivered in this state which negates the provisions of this Code section or which provides that the limits of the policy are excess over amounts payable from the State Tort Claims Trust Fund under this Code section. (Code 1981, § 50-21-37, enacted by Ga. L. 1994, p. 1717, § 13.)

CHAPTER 22

MANAGERIAL CONTROL OVER ACQUISITION OF
PROFESSIONAL SERVICES

Sec.		Sec.	
50-22-1.	Purpose and policy.	50-22-6.	Selection of professional through contract negotiations; contractual prohibition against contingent fees; right to terminate contract.
50-22-2.	Definitions.		
50-22-3.	Public notice of proposed project requiring professional services.	50-22-7.	Exemptions from requirements; construction with Code Section 50-6-25.
50-22-4.	Submission of information to state agency by persons desiring to provide professional services; preliminary selections.	50-22-8.	Rules and regulations.
50-22-5.	Final selection of professional by other than contract negotiations [Repealed].	50-22-9.	Waiver of chapter requirements in emergencies.

Code Commission notes. — Ga. L. 1982, p. 2261, § 1 added a “Chapter 21” to this title, relating to the Georgia Commission on State Growth Policy. That chapter was unofficially designated “Chapter 22” owing to the earlier enactment of a Chapter 21 by Ga. L. 1982, p. 495, § 2. The Code sections enacted by Ga. L. 1982, p. 2261, § 1 were

then officially redesignated as Code Sections 50-12-130 through 50-12-137 and placed in a new Article 8 of Chapter 12 of this title by Ga. L. 1983, p. 3, § 39. Former Code Sections 50-12-130 through 50-12-137 were repealed pursuant to the terms of former Code Section 50-12-137, which provided for repeal on June 30, 1985.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Works and Contracts, § 41.

C.J.S. — 73A C.J.S., Public Contracts, § 15.

50-22-1. Purpose and policy.

The purpose of this chapter is to provide managerial control by the state over the acquisition of the professional services provided by architects, professional engineers, landscape architects, land surveyors, and interior designers. It is declared to be the policy of this state to announce publicly requirements for such professional services, to encourage all qualified persons to put themselves in a position to be considered for a contract, and to enter into contracts for such professional services on the basis of demonstrated competence and qualification for the types of professional services required at fair and reasonable fees. (Code 1981, § 50-22-1, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 1/HB 155.)

OPINIONS OF THE ATTORNEY GENERAL

Legislation required to allow Department of Transportation to exceed limitations on professional services contracts. — While the provisions of O.C.G.A. § 32-2-73 do not apply to contracts for professional services which are governed by O.C.G.A. Ch. 22, T.

50, legislation is required to allow the Department of Transportation to exceed the limitations on such professional services contracts found in O.C.G.A. § 50-6-25(b). 1994 Op. Att’y Gen. No. U94-14.

50-22-2. Definitions.

As used in this chapter, the term:

(1) “Agency” means every state department, agency, board, bureau, commission, and authority, unless otherwise exempted under the provisions of subsection (b) of Code Section 50-22-7.

(2) “Person” means an individual, a corporation, a partnership, a business trust, an association, a firm, or any other legal entity.

(2.1) “Predesign” means that phase of an activity where requirements programming, site analysis, and other appropriate studies are conducted to develop essential information, including cost estimates, to support and advance the decision-making process prior to the design and implementation phases of an activity.

(3) “Principal representative” means the governing board of a state agency or the executive head of a state agency who is authorized to contract for the agency for professional services.

(4) “Professional services” means those services within the scope of the following:

(A) The practice of architecture, as defined in paragraph (6) of Code Section 43-4-1;

(B) The practice of registered interior design, as defined in Code Section 43-4-30;

(C) The practice of professional engineering, as defined in paragraph (11) of Code Section 43-15-2;

(D) The practice of land surveying, as defined in paragraph (6) of Code Section 43-15-2; or

(E) The practice of landscape architecture, as defined in paragraph (3) of Code Section 43-23-1.

(5) “Project” means any activity requiring professional services estimated by the state agency to have:

(A) A cost in excess of \$1 million; or

(B) Costs for professional services in excess of \$75,000.00. (Code 1981, § 50-22-2, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, §§ 3, 4; Ga. L. 2001, p. 4, § 50; Ga. L. 2005, p. 1139, § 2/HB 155.)

50-22-3. Public notice of proposed project requiring professional services.

Public notice shall be required for each proposed project which requires professional services. Such public notice shall be given at least 15 days prior to the selection of the three or more most highly qualified persons by the principal representative or the principal representative's designee pursuant to subsection (b) of Code Section 50-22-4. Such public notice shall be given by publication at least once in the Georgia Procurement Registry established under subsection (b) of Code Section 50-5-69 and in addition may be given by publication in one or more daily newspapers of general circulation in this state, shall contain a general description of the proposed project, and shall indicate what selection method shall be used and the procedure by which interested persons may apply for consideration for the contract. (Code 1981, § 50-22-3, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, § 5.)

50-22-4. Submission of information to state agency by persons desiring to provide professional services; preliminary selections.

(a) Any person desiring to provide professional services to a state agency shall submit to the agency a statement of qualifications and performance data and such other information as may be required by the agency. The agency may request such person to update such statement periodically in order to reflect changed conditions in the status of such person.

(b) For each proposed project for which professional services are required, the principal representative or his or her designee of the state agency for which the project is to be done shall evaluate statements of qualifications and performance data as required in the public notice provided for in Code Section 50-22-3 and shall conduct discussions with not less than three persons regarding their qualifications, approaches to the project, abilities to furnish the required professional services, anticipated design concepts, and use of alternative methods of approach for furnishing the required professional services. The principal representative or his or her designee shall then select not less than three nor more than five persons deemed to be most highly qualified to perform the required professional services after considering, and based upon, such factors as the ability of professional personnel, past performance, willingness to meet time requirements, project location, office location, the professional's current and projected workloads, the professional's approach, quality control procedures, the volume of work previously awarded to the person by the state

agency, and the extent to which said persons have and will involve minority subcontractors, with the object of effecting an equitable distribution of contracts among qualified persons as long as such distribution does not violate the principle of selection of the most highly qualified person. In selection, as mentioned in this Code section, persons who maintain an office in Georgia shall be given preference when qualifications appear to be equal. (Code 1981, § 50-22-4, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 3/HB 155.)

50-22-5. Final selection of professional by other than contract negotiations.

Reserved. Repealed by Ga. L. 2005, p. 1139, § 4/HB 155, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-22-5, enacted by Ga. L. 1984, p. 1648, § 1.

50-22-6. Selection of professional through contract negotiations; contractual prohibition against contingent fees; right to terminate contract.

(a) The principal representative or his or her designee shall rank in order not less than three nor more than five persons deemed most qualified to perform such professional services. The principal representative or his or her designee shall then negotiate a contract with the highest qualified person providing professional services for such services at compensation which the principal representative or his or her designee determines in writing to be fair and reasonable. In making such decision, the principal representative or his or her designee shall take into account the estimated value of the services to be rendered and the scope, complexity, and professional nature thereof.

(b) If the principal representative or his or her designee is unable to negotiate a satisfactory contract with the person considered to be the most qualified at a price the principal representative determines to be fair and reasonable, negotiations with that person shall be formally terminated. The principal representative or his or her designee shall then undertake negotiations with the second most qualified person. If the principal representative or his or her designee fails to negotiate a contract with the second most qualified person, the principal representative or his or her designee shall formally terminate such negotiations. The principal representative or his or her designee shall then undertake negotiations with the third most qualified person.

(c) If the principal representative or his or her designee is unable to negotiate a satisfactory contract with any of the selected persons, the principal representative or his or her designee shall either select additional

persons in order of their competence and qualifications and continue negotiations in accordance with this Code section until a contract is reached or review the contract under negotiation to determine the possible cause for failure to achieve a negotiated contract.

(d) Each contract for professional services entered into by the principal representative shall contain a prohibition against contingent fees as follows: the architect, registered land surveyor, professional engineer, landscape architect, or interior designer, as applicable, warrants that he or she has not employed or retained any company or person, other than a bona fide employee working solely for him or her, to solicit or secure this contract and that he or she has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for him or her, any fee, commission, percentage, gift, or other consideration contingent upon or resulting from the award or the making of this contract.

(e) Upon any violation of this Code section, the principal representative shall have the right to terminate the contract without liability and, at his or her discretion, to deduct from the contract price or recover otherwise the full amount of such fee, commission, percentage, or consideration. (Code 1981, § 50-22-6, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 2005, p. 1139, § 5/HB 155.)

Code Commission notes. — Pursuant to was substituted for “his” throughout this Code Section 28-9-5, in 2009, “his or her” Code section.

50-22-7. Exemptions from requirements; construction with Code Section 50-6-25.

(a) Notwithstanding any other provisions of this chapter, there shall be no public notice requirement or utilization of the selection process as provided for in this chapter for projects in which the state agency is able to reuse existing drawings, specifications, designs, or other documents from a prior project by retention of the person who provided the professional services and who prepared the original documents.

(b) Notwithstanding any other provisions of this chapter, the Board of Regents and University System of Georgia shall be exempt from the provisions of this chapter.

(c) The provisions of Code Section 50-6-25, relating to the eligibility of architectural and engineering firms to do business with the state, shall not be affected or superseded by the provisions of this chapter.

(d) Notwithstanding any other provisions of this chapter, there shall be no public notice requirement or utilization of the selection process as provided for in this chapter for services required for the predesign phase of any state agency construction project unless the state agency estimates the

predesign phase alone to have costs for professional services in excess of \$75,000.00. No award of a contract to provide predesign services under this exemption shall be interpreted to preclude the lawful necessity to give public notice and use the selection process for design of projects meeting the criteria of paragraph (5) of Code Section 50-22-2. Costs for predesign services, whether or not those services are exempt under this subsection, shall be added to any other costs of an activity for purposes of determining whether the activity is a project. (Code 1981, § 50-22-7, enacted by Ga. L. 1984, p. 1648, § 1; Ga. L. 1998, p. 1372, § 6.)

50-22-8. Rules and regulations.

A state agency shall be authorized to promulgate rules and regulations to carry out the provisions of this chapter. (Code 1981, § 50-22-8, enacted by Ga. L. 1984, p. 1648, § 1.)

50-22-9. Waiver of chapter requirements in emergencies.

In an emergency situation, agencies may waive all the requirements of this chapter and select by the most expeditious means possible the person to provide the professional services. (Code 1981, § 50-22-9, enacted by Ga. L. 1984, p. 1648, § 1.)

CHAPTER 23

ENVIRONMENTAL FACILITIES AUTHORITY

Article 1

Environmental Facilities Authority

PART 1

GENERAL PROVISIONS

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- 50-23-1. Short title.
- 50-23-2. Legislative intent; assumption of rights, duties, and assets of the Georgia Development Authority.
- 50-23-3. Creation of Georgia Environmental Facilities Authority; members; quorum; travel and expenses; legal services; members' accountability; recordkeeping; authority assigned.
- 50-23-4. Definitions.
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- 50-23-11. Pledge of state not to alter or limit the rights of bondholders.
- 50-23-12. Personal liability of members of authority, officers, and employees.
- 50-23-13. Liberal construction; bonds exempt from securities law; necessity of notice, proceeding, or publication; referendums.
- 50-23-14. Bonds not indebtedness of state; guarantee of bonds by state.
- 50-23-15. Exemptions from taxation.

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- 50-23-16. Rights under federal Constitution.
- 50-23-17. Approval of bond issues and other obligations by state financing and investment commission.
- 50-23-18. Liberal construction.
- 50-23-19. Limitation on issue of bonds.
- 50-23-20. Withholding state funds from local governments or nongovernmental entities failing to collect and remit amounts when due.
- 50-23-21. Grants for clean energy property; rules and regulations; annual report.

PART 2

WATER SUPPLY DIVISION

- 50-23-25. "Division" defined.
- 50-23-26. Creation of Water Supply Division; director.
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- 50-23-28. Establishment of Georgia Reservoir Fund; administration; report.
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Article 2

Division of Energy Resources

- 50-23-30. "Division" defined.
- 50-23-31. Creation; executive director.
- 50-23-32. Powers and duties.
- 50-23-33. Employees [Repealed].
- 50-23-34. Office of Energy Resources: Assets, funds, property, contracts, programs, obligations, interests transferred to authority [Repealed].
- 50-23-35. Rules and regulations authorized.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 146 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 102 et seq., 172.

ARTICLE 1

ENVIRONMENTAL FACILITIES AUTHORITY

PART 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 2008, p. 644, Sections 50-23-1 through 50-23-20 as Part 1 § 2-6, effective July 1, 2008, designated Code of this Article.

50-23-1. Short title.

This article shall be known and may be cited as the “Georgia Environmental Facilities Authority Act.” (Code 1981, § 50-23-1, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-2. Legislative intent; assumption of rights, duties, and assets of the Georgia Development Authority.

(a) It is found and declared that the availability of adequate environmental facilities is an important element in the ability of a community to provide for the continuing economic growth and development that provide jobs for the state’s citizens. It is also recognized that many communities lack the financial resources to provide for the needed facilities that both protect the environment and provide for such future economic expansion. Financial assistance is an important aid for the local governments in meeting these needs and it is declared in the public interest and for the public benefit and good and is so desired as a matter of legislative intent.

(b) It is the purpose and intent of this article to provide an instrumentality to assist in constructing, extending, rehabilitating, repairing, and renewing environmental facilities and to assist in the financing of such needs by providing grants, loans, bonds, and other assistance to local governments and instrumentalities of the state.

(c) The authority shall receive all assets of the Georgia Development Authority held immediately prior to the creation of the Georgia Environmental Facilities Authority except those assets received under the provisions of Public Law 499, Eighty-first Congress, Second Session, or funds or assets derived from such funds or assets. The authority shall be responsible for any contracts, leases, agreements, or other obligations entered into regarding the environmental facilities projects of the Georgia Development Authority prior to the creation of the Georgia Environmental Facilities Authority and the Georgia Environmental Facilities Authority is substituted as party to any such contract, agreement, lease, or other obligation and shall be responsible for performance thereon as if it had been the original party and shall be entitled to all benefits and rights of enforcement by any other parties to

such contracts, agreements, leases, or other obligations. (Code 1981, § 50-23-2, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2001, p. 1225, § 2.)

Cross references. — Georgia Development Authority, Ch. 10, T. 50.

Congress, Second Session was codified at 40 U.S.C. §§ 440 through 444, but has been omitted as having been executed.

U.S. Code. — Public Law 499, Eighty-first

50-23-3. Creation of Georgia Environmental Facilities Authority; members; quorum; travel and expenses; legal services; members' accountability; recordkeeping; authority assigned.

(a) There is created a body corporate and politic to be known as the Georgia Environmental Facilities Authority which shall be deemed an instrumentality of the state and a public corporation; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state. The authority shall consist of 11 members: the commissioner of community affairs, ex officio; the state auditor, ex officio; the commissioner of economic development, ex officio; and eight members to be appointed by the Governor. Three members shall be municipal officials, three members shall be county officials, and two members shall be at large. Any municipal or county official shall serve only so long as such official remains in office as a municipal or county official. The Governor shall appoint one municipal official, one county official, and one at-large member to serve until July 1, 1989; and shall appoint two municipal officials, two county officials, and one at-large member of the authority to serve until July 1, 1990. After the expiration of these terms, the terms of all succeeding members shall be for four years.

(b) A majority of the members of the authority shall constitute a quorum. No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The members of the authority shall be entitled to and shall be reimbursed for their actual travel and expenses necessarily incurred in the performance of their duties and shall receive the same per diem as do members of the General Assembly. The authority shall make rules and regulations for its own government. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this article or impair the obligations of any contracts existing under this article. The Attorney General shall provide legal services for the authority and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

(c) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to an independent auditing firm selected

by the authority on or about the close of the state's fiscal year for the purpose of obtaining a certified audit of the authority's finances.

(d) The authority is assigned to the Department of Community Affairs for administrative purposes only. (Code 1981, § 50-23-3, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1641, § 17; Ga. L. 1991, p. 1685, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2004, p. 690, § 42.)

Editor's notes. — Ga. L. 1989, p. 1641, which amended this Code section, provides in § 18, not codified by the General Assembly: "In the event of any substantive conflict

between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

50-23-4. Definitions.

As used in this chapter, the term:

(1) "Authority" means the Georgia Environmental Facilities Authority.

(2) "Bond" includes revenue bond, bond, note, or other obligation.

(3) "Cost of project" or "cost of any project" means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, or rehabilitation incurred in connection with any project or any part of any project;

(B) All costs of real property, fixtures, or personal property used in or in connection with or necessary for any project or for any facilities related thereto, including but not limited to, the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project;

(C) All financing charges, bond insurance, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project and during such additional period as the authority may reasonably determine to be necessary to place such project in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, account-

tants, and any other necessary technical personnel in connection with any project;

(E) All expenses for inspection of any project;

(F) All fees of fiscal agents, paying agents, and trustees for bondholders under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, including bond insurance;

(G) All fees of any type charged by the authority in connection with any project;

(H) All expenses of or incidental to determining the feasibility or practicability of any project;

(I) All costs of plans and specifications for any project;

(J) All costs of title insurance and examinations of title with respect to any project;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project or the financing thereof or the placing of any project in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project and as may be authorized by any bond resolution, trust agreement, indenture, or trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority.

(4) "County" means any county created under the Constitution or laws of this state.

(5) "Environmental facilities" means any projects, structures, and other real or personal property acquired, rehabilitated, constructed, or planned:

(A) For the purposes of supplying, distributing, and treating water and diverting, channeling, or controlling water flow and head including, but not limited to, surface or ground water, canals, reservoirs, channels, basins, dams, aqueducts, standpipes, penstocks, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, mechanical equipment, electric generating equipment, rights of flowage or division and other plant structures, equipment, conveyances, real or personal property or rights therein and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, conveyance, distribution, pumping, treatment, storing, or disposing of water;

(B) For the purposes of collecting, treating, or disposing of sewage including, but not limited to, main, trunk, intercepting, connecting, lateral, outlet, or other sewers, outfall, pumping stations, treatment and disposal plants, ground water recharge basins, backflow prevention devices, sludge dewatering or disposal equipment and facilities, clarifiers, filters, phosphorus removal equipment and other plants, soil absorption systems, innovative systems or equipment, structures, equipment, vehicles, conveyances, real or personal property or rights therein, and appurtenances thereto necessary or useful and convenient for the collection, conveyance, pumping, treatment, neutralization, storing, and disposing of sewage;

(C) For the purposes of collecting, treating, recycling, composting, or disposing of solid waste, including, but not limited to, trucks, dumpsters, intermediate reception stations or facilities, transfer stations, incinerators, shredders, treatment plants, landfills, landfill equipment, barrels, binders, barges, alternative technologies and other plant structures, equipment, conveyances, improvements, real or personal property or rights therein, and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, treatment, or disposal of solid waste; or

(D) For the purposes of carrying out a community land conservation project or a state land conservation project pursuant to Chapter 22 of Title 36.

(6) “Environmental services” means the provision, collectively or individually, of water facilities, sewerage facilities, solid waste facilities, community land conservation projects or state land conservation projects pursuant to Chapter 22 Title 36, or management services.

(7) “Local government” or “local governing authority” means any municipal corporation or county or any local water or sewer or sanitary district and any state or local authority, board, or political subdivision

created by the General Assembly or pursuant to the Constitution and laws of the state.

(8) "Management services" means technical, administrative, instructional, or informational services provided to any current or potential loan recipient in, but not limited to, the areas of service charge structure; accounting, capital improvements budgeting or financing; financial reporting, treasury management, debt structure or administration or related fields of financial management; contract or grant administration; management of water, sewer, or solid waste systems; and economic development administration or strategies. Management services may be furnished either directly, on-site, or through other written or oral means of communication and may consist of reports, studies, presentations, or other analyses of a written or oral nature.

(9) "May" means permission and not command.

(10) "Municipal corporation" or "municipality" means any city or town in this state.

(10.1) "Nongovernmental entity" means a nonprofit organization the primary purposes of which are the permanent protection and conservation of land and natural resources.

(10.2) "Nonprofit corporation" means any corporation qualified as a not for profit corporation by the Internal Revenue Service under Section 501(c)(3) or Section 501(c)(4) of the Internal Revenue Code.

(11) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the authority, the state, or local governments which are authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(12) "Project" means:

(A) The acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing environmental facilities and services so as to meet public health and environmental standards, protect the state's valuable natural resources, or aid the development of trade, commerce, industry, agriculture, and employment opportunities, including, but not limited to, any project as defined by Code Section 12-5-471; and

(B) Projects authorized by the Georgia Regional Transportation Authority created by Chapter 32 of this title as defined in such chapter, where the authority has been directed to issue revenue bonds, bonds, notes, or other obligations to finance such project or the cost of a project in whole or in part, provided that the authority's power with respect to such projects authorized by the Georgia Regional Transportation Authority shall be limited to providing such financing and related matters as authorized by the Georgia Regional Transportation Authority.

(13) "Revenue bond" includes bond, note, or other obligation.

(14) "Self-liquidating project" means any project or combination of projects if, in the judgment of the authority, the revenues, rents, or earnings to be derived by the authority therefrom will be sufficient to pay the cost of maintaining, repairing, and operating the project and to pay the principal and interest of revenue bonds which may be issued for the cost of such project, projects, or combination of projects.

(15) "Sewerage facility" means any environmental facility described in subparagraph (B) of paragraph (5) of this Code section, defining "environmental facilities."

(15.5) "Solid waste facility" means any environmental facility described in subparagraph (C) of paragraph (5) of this Code section, defining "environmental facilities."

(16) "Water facility" means any environmental facility described in subparagraph (A) of paragraph (5) of this Code section, defining "environmental facilities." (Code 1981, § 50-23-4, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, §§ 1-3; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 1108, § 6; Ga. L. 1999, p. 112, § 8; Ga. L. 2006, p. 267, § 1/HB 1319; Ga. L. 2008, p. 90, § 3-1/HB 1176; Ga. L. 2008, p. 644, § 2-2/SB 342.)

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, added paragraphs (10.1) and (10.2). The second 2008 amendment, effective July 1, 2008, in paragraph (12), substituted "'Project' means: (A) The" for "'Project' means the"; in subparagraph (12)(A), added ", including, but not limited to, any project as defined by Code Section 12-5-471; and" at the end; added the subparagraph (12)(B) designation; and, in subparagraph (12)(B), substituted "Projects" for "or projects" at the beginning.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "and" was inserted preceding "connections for utility

services" and "the cost of" was inserted preceding "fees" in subparagraph (3)(B), and "waterworks" was substituted for "water works" in subparagraph (5)(A).

Pursuant to Code Section 28-9-5, in 1989, the period at the end of paragraph (15) was moved inside the closing quotation marks.

U.S. Code. — Section 501(c)(3) and Section 501(c)(4) of the Internal Revenue Code, referred to in paragraph (10.2) of this Code section, is codified as 26 U.S.C. § 501(c)(3) and 26 U.S.C. § 501(c)(4).

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990). For article, "Standards for Smart Growth: Searching for

Limits on Agency Discretion and the Georgia Regional Transportation Authority," see 36 Ga. L. Rev. 247 (2001).

For note on 1999 amendment to this Code section, see 16 Ga. St. U.L. Rev. 233 (1999).

50-23-5. Purpose, powers, and duties.

(a) The corporate purpose and the general nature of the business of the Georgia Environmental Facilities Authority shall be assistance in constructing, extending, rehabilitating, repairing, replacing, and renewing environmental facilities necessary for public purposes and commercial, residential, and industrial development purposes or necessary or incidental to such purposes by providing grants, loans, bonds, and other forms of financial and technical assistance to local governments and instrumentalities of the state to finance any project or pay the cost of any project.

(b) The authority shall have power:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of such actions being the Superior Court of Fulton County;

(2) To have a seal and alter the same at its pleasure;

(3) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the state or any state authority; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(4) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(5) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(6) To finance projects by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of any project from the proceeds of bonds,

revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(7) To make loans, through the acquisition of bonds, revenue bonds, notes, or other obligations, and to make grants to local governments to finance projects and to pay the cost of any project by local government and to adopt rules, regulations, and procedures for making such loans and grants;

(8) To borrow money to further or carry out its public purpose and to issue revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(9) To issue revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part, the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the revenue bonds, bonds, notes, or other obligations;

(10) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(11) Subject to any agreement with bondholders, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government and its subsidiary corporations and instrumentalities or entities sanctioned or authorized by the United States government including, but not limited to, the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, Farm Credit Banks regulated by the Farm Credit Administration, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be available for use at the time provided with respect to the investment or reinvestment of such moneys;

(G) Prime bankers' acceptances; and

(H) State operated investment pools;

(12) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(13) To invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (11) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(14) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(15) To make loan commitments and loans to local government and to enter into option arrangements with local government for the purchase of said bonds, revenue bonds, notes, or other obligations;

(16) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(17) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(18) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(19) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority and such state agencies and local governments are authorized to enter into such contracts;

(20) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations to the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(21) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds,

notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(22) To receive and use the proceeds of any tax levied by a local government to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(23) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall determine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for solid waste projects;

(23.1) To exercise such powers and perform such functions as provided for the authority under Chapter 6A of Title 12, including but not limited to the making of grants and loans as provided therein, for purposes of land conservation projects as defined in said chapter; and to provide advisory, technical, consultative, training, educational, and assistance services and enter into agreements for the same for purposes of such land conservation projects;

(23.2) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority including but not limited to accepting donations to be used to advance state-wide energy education and energy efficiency and conservation initiatives. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents.

(24) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies

thereof and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction, and to enter into contracts or agreements with the authority and local government to achieve or further the policies of the state declared in this chapter;

(25) To adopt bylaws governing the conduct of business by the authority, the election and duties of officers of the authority, and other matters which the authority determines to deal with in its bylaws;

(26) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(27) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(28) To designate three or more of its number to constitute an executive committee who, to the extent provided in such resolution or in the bylaws of the authority, shall have and may exercise the powers of the authority in the management of the affairs and property of the authority and the exercise of its powers;

(29) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(30) To administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title VI of the Federal Water Pollution Control Act and Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or to any public authority or, if authorized by law, any private agency, commission, or institution for construction of treatment works as that term is defined in Section 212 of the federal Clean Water Act of 1977, P.L. 95-217, which are publicly owned. The authority may also administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or any public or, if authorized by law, any private authority, agency, commission, or institution for the construction of public drinking water works as such term is defined in Section 1401 of the federal Safe Drinking Water Act Amendments of 1986, P.L. 99-339. The authority may also administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to 33 U.S.C.A. Section 1381, et seq., for the purpose of providing financial assistance for any eligible water pollution control project. The authority shall deposit any such funds received from the administrator of the federal Environmental

Protection Agency into a separate water pollution control revolving fund or a drinking water revolving fund transferred to the authority from the Environmental Protection Division of the Department of Natural Resources or hereafter established; provided, however, that where appropriate, the authority may deposit funds received from the administrator of the federal Environmental Protection Agency into the Georgia Reservoir Fund established by Code Section 50-23-28. The forms and administration of such funds shall be established by the authority in accordance with federal requirements;

(30.1) To exercise any powers necessary or convenient to conduct the activities and perform the acts that are contemplated for the authority by Chapter 22 of Title 36;

(30.2) To fund, or partially fund, the Georgia Land Conservation Revolving Loan Fund established by Chapter 22 of Title 36;

(31) To contract with the Environmental Protection Division of the Department of Natural Resources for the implementation and operation, in whole or in part, of any drought protection or reservoir program and for the purposes of Article 6 of Chapter 5 of Title 12;

(31.1) To fund, or partially fund, the Georgia Reservoir Fund established by Code Section 50-23-28. Proceeds of any bonds authorized by the General Assembly for the purposes of said Code section, and any repayment of such proceeds after their expenditure, may be deposited in such fund;

(31.2) For the purpose of supplementing and extending the ability of the authority to expedite and accommodate the construction of projects, to enter into arrangements, consistent with existing bond indenture and other obligations of the authority, whereby the authority agrees to enter into one or more notes with a financial institution or other lender, the proceeds of which shall be payable to the authority and which constitute an obligation of the authority, together with a companion note or notes on substantially the same terms payable from the authority to a local government, with such companion notes, and the obligation of repayment thereon, pledged as security for the repayment of such notes, on such terms as may be agreeable to the parties thereto; and

(32) To lend any of the securities of the type described in this subsection.

(c) The authority shall not have the power of eminent domain. (Code 1981, § 50-23-5, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1991, p. 94, § 50; Ga. L. 1992, p. 6, § 50; Ga. L. 1992, p. 2316, § 1; Ga. L. 1994, p. 555, § 2; Ga. L. 1994, p. 1108, § 6; Ga. L. 2000, p. 458, § 3; Ga. L. 2001, p. 1225, § 3; Ga. L. 2003, p. 359, § 2; Ga. L. 2004, p. 319, § 4; Ga. L. 2006, p. 72, § 50/SB 465; Ga. L. 2006, p. 267, § 2/HB 1319; Ga. L. 2008, p. 90, § 3-2/HB 1176; Ga. L. 2008, p. 644, § 2-3/SB 342.)

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, added paragraphs (b)(23.1) and (b)(23.2). The second 2008 amendment, effective July 1, 2008, in paragraph (30), substituted “may also” for “is further authorized to” in the second and third sentences, and added the proviso at the end of the fourth sentence; in paragraph (31), deleted “the director of” following “contract with” near the beginning, inserted “or reservoir”, inserted “and for the purposes of Article 6 of Chapter 5 of Title 12”, and deleted “and” from the end; and, added paragraphs (31.1) and (31.2).

Code Commission notes. — Pursuant to Code Section 28-9-5, subsection (e) of this Code section, as enacted by Ga. L. 1986, p. 569, § 1, was redesignated as subsection (c), inasmuch as the Code section as enacted contained no subsection (c) or (d).

Pursuant to Code Section 28-9-5, in 1986, a comma was deleted following “qualifications” in paragraph (b)(5).

Pursuant to Code Section 28-9-5, in 1990, a semicolon was substituted for the period at the end of paragraph (b)(24).

U.S. Code. — The Bank Holding Company Act of 1956, referred to in subparagraph (b)(11)(F), is codified at 12 U.S.C. § 1841 et seq.

The Federal Water Pollution Control Act,

as amended, and the federal Clean Water Act of 1977, as amended, referred to in paragraph (b)(30) of this Code section, are codified at 33 U.S.C. § 1251 et seq.

The federal Safe Drinking Water Act, referred to in paragraph (b)(30) of this Code section, is codified at 42 U.S.C. § 300f et seq.

Administrative rules and regulations. — Regional solid waste management incentive grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Environmental Facilities Authority, Chapter 267-1.

Recycling and waste reduction grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Environmental Facilities Authority, Chapter 267-2.

Drinking water state revolving loan program for disadvantaged communities, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Environmental Facilities Authority, Chapter 267-13.

Empowerment zone, enterprise community loan grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Environmental Facilities Authority, Chapter 267-9.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 29 (2000).

50-23-6. Loans to local governments; repayment.

(a) Reserved.

(b) The authority may make loans to a local government to pay all or any part of the cost of a project. The authority may require the local government to issue bonds or revenue bonds as evidence of such loans. The authority and a local government may enter into such loan commitments and option agreements as may be determined appropriate by the authority.

(c) The authority may require as a condition of any loan to a local government that such local government shall perform any or all of the following:

(1) As appropriate and permitted by law, establish and collect taxes, rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, replacement, renewal, and repairs; and

(B) Outstanding indebtedness incurred for the purposes of such project, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(2) Create and maintain a special fund or funds as additional security for the payment of the principal revenue bonds and the interest thereon and any other amounts becoming due under any agreement entered into in connection with such bonds and for the deposit of such revenues as shall be sufficient to make such payment as the same shall become due and payable;

(3) Create and maintain such other special funds as may be required by the authority; and

(4) Such other acts, including the conveyance of real and personal property together with all right, title, or interest therein to the authority, as may be deemed necessary or desirable by the authority to secure the payment of the principal of and interest on bonds, revenue bonds, notes, or other obligations and to provide for the remedies of the authority in the event of any default by such local government in such payment.

(d) All local governments issuing and selling bonds, revenue bonds, notes, or other obligations to the authority are authorized to perform such acts, take such action, adopt such proceedings, and make and carry out such contracts with the authority as may be contemplated by this article.

(e) In connection with the making of any loan authorized by this article, the authority may fix and collect such fees and charges, including but not limited to reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable. Neither the Public Service Commission nor any local government or state agency shall have jurisdiction over the authority's power over the regulation of such fees or charges.

(f) A mutual undertaking by a local government to borrow and an undertaking by the authority to lend funds from and to each other for projects shall be a provision for services and an activity within the meaning of Article IX, Section III, Paragraph I(a) of the Constitution. (Code 1981, § 50-23-6, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 4; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 3/HB 1319; Ga. L. 2008, p. 90, § 3-3/HB 1176.)

The 2008 amendment, effective July 1, 2008, substituted "Reserved." for the former provisions of subsection (a), which read: "The authority may make grants to govern-

mental entities as provided for in Chapter 22 of Title 36 and as otherwise provided by law."

OPINIONS OF THE ATTORNEY GENERAL

Community reservoirs. — Georgia Environmental Facilities Authority may lend proceeds from general obligation bonds of the state to local governments, acting either jointly or separately, to establish community reservoirs. 1988 Op. Att’y Gen. No. 88-26.

Constitutionality of loans by Georgia Environmental Facilities Authority. — Loans by the Department of Natural Resources pursuant to O.C.G.A. § 12-5-38.1 and loans by Georgia Environmental Facilities Authority pursuant to O.C.G.A. § 50-23-1 et seq. do not cause a city or county to incur debt in accordance with Ga. Const. 1983, Art. IX, Sec. V, Para. I. The constitutional underpinning of these programs is in the intergovernmental contract clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Thus, the procedural requirements in O.C.G.A. § 48-8-111 for

submitting a debt question are not triggered where proceeds derived from the sales tax are to be applied to repayment of the loans by Department of Natural Resources (DNR) or Georgia Environmental Facilities Authority (GEFA). 1990 Op. Att’y Gen. No. U90-7.

Authority of Georgia Environmental Facilities Authority and city of Atlanta regarding loans. — Georgia Environmental Facilities Authority is statutorily empowered to make the administrative and policy determinations requiring the city of Atlanta to pledge its full faith and credit as security for a loan from the Authority, there are no constitutional prohibitions upon the city pledging its full faith and credit for such a loan, and a referendum is not required prior to the city making the pledge. 2004 Op. Att’y Gen. No. 2004-8.

50-23-7. Lease agreements.

(a) For the purposes of this article, the term “lease agreement” shall mean and include a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease agreement having a term of not more than 50 years and concerning real, personal, or mixed property, any right, title, or interest therein by and between the state, the authority, a local government, or any combination thereof.

(b) A local government by resolution of its governing body may enter into a lease agreement for the provision of environmental services utilizing facilities owned by the authority upon such terms and conditions as the authority shall determine to be reasonable including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(c) No lease agreement shall be deemed to be a contract subject to any law requiring that contract shall be let only after receipt of competitive bids.

(d) Any lease agreement may provide for the construction of such environmental facility by the local government as agent for the authority. In such event, all contracts for such construction shall be let by such local government in accordance with the provisions of law otherwise applicable to the letting of such contracts by such local government and with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Any such lease agreement may contain provisions by which such local government shall indemnify the authority against any and all damages resulting from acts or omissions to act on the part of such local government or its officers, agents, or employees in constructing such facility

or facilities, in letting any contracts in connection therewith, or in operating and maintaining the same.

(e) Any lease agreement executed by the authority directly with any local government may provide at the termination thereof that title to the environmental facility project shall vest in the local government or its successor in interest, if any, free and clear of any liens or encumbrances created in connection with any contract or bonds, revenue bonds, notes, or other obligations involving the authority.

(f) Any lease agreement directly between the state or authority and a local government may contain provisions requiring the local government to perform any or all of the following:

(1) As appropriate and otherwise permitted by law, establish and collect taxes, rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, replacement, and repairs of any project of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such project and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(2) Create and maintain reasonable reserves or other special funds;

(3) Create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such lease agreement and for the deposit of such revenues as shall be sufficient to pay rentals and any other amounts becoming due under such lease agreements as the same shall become due and payable; and

(4) Such other acts and take such other action as may be deemed necessary and desirable by the authority to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the authority in the event of a default by such local government in such payment. (Code 1981, § 50-23-7, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 5; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 4/HB 1319.)

50-23-8. Issuing and refunding of bonds.

(a) The authority shall have the power and is authorized from time to time to issue bonds, in such principal amounts as it may determine to be necessary to pay all or a portion of the cost of any project or environmental facilities, to provide amounts necessary for any corporate purposes, including incidental expenses in connection with the issuance of the bonds.

(b) In addition, the authority shall have the power and is authorized to issue bonds in such principal amounts as the authority deems appropriate, such bonds to be primarily secured by a pool of obligations issued by local governments when the proceeds of the local government obligations are applied to local environmental facility projects.

(c) The authority shall have the power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose.

(d) Bonds issued by the authority may be general or limited obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and state agencies, local government, or private parties and subject to any agreements with the holders of outstanding bonds pledging any particular revenues or moneys.

(e)(1) The authority is authorized to obtain from any department, agency, or corporation of the United States of America or governmental insurer, including the state, any insurance or guaranty, to the extent now or hereafter available, as to or for the payment or repayment of interest or principal, or both, or any part thereof on any bonds or notes issued by the authority or on any obligations of federal, state, or local governments purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the holders of the bonds or notes of the authority.

(2) Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times as the authority determines to be appropriate, except that bonds and any renewal thereof shall mature within 25 years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in such form, either coupon or registered, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution of the authority may provide. Bonds may be sold at public or private sale for such price or prices as the authority shall determine.

(3) Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the holders of the bonds thereby authorized as to:

(A) Pledging all or part of its revenues, together with any other moneys, securities, contracts, or property, to secure the payment of the bonds, subject to such agreements with bondholders as may then exist;

(B) Setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(C) Limiting the purpose to which the proceeds from the sale of bonds may be applied;

(D) Limiting the right of the authority to restrict and regulate the use of any project or part thereof in connection with which bonds are issued;

(E) Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(F) Setting the procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, including the proportion of bondholders which must consent thereto and the manner in which such consent may be given;

(G) Creating special funds into which any revenues or other moneys may be deposited;

(H) Setting the terms and provisions of any trust, deed, or indenture or other agreement under which the bonds may be issued;

(I) Vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the authority may determine, which may include any or all of the rights, powers, and duties of the trustee appointed by the bondholders pursuant to Code Section 50-10-11 and limiting or abrogating the rights of the bondholders to appoint a trustee under such Code section or limiting the rights, duties, and powers of such trustee;

(J) Defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bondholders and providing for the rights and remedies of the bondholders in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this article;

(K) Limiting the power of the authority to sell or otherwise dispose of any environmental facility or any part thereof or other property, including municipal bonds held by it;

(L) Limiting the amount of revenues and other moneys to be expended for operating, administrative, or other expenses of the authority;

(M) Providing for the payment of the proceeds of bonds, obligations, revenues, and other moneys to a trustee or other depository and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(N) Establishing any other matters of like or different character which in any way affect the security for the bonds or the rights and remedies of bondholders.

(4) In addition to the powers conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, consistent, or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, moneys, or property and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this article and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the holders of bonds of the authority.

(5) Any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles, or other personal property made or created by the authority shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(6) All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and shall be sealed with the official seal or a facsimile thereof. Coupons, if any, shall be executed in the name of the authority by the chairperson of the authority, the facsimile signature of the chairperson and the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs; and the facsimile of the chairperson's signature shall be used on coupons, if such are attached. Bonds and interest coupons appurtenant thereto bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery thereof such person ceased to hold such office.

(7) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchange-

able for definitive bonds upon the issuance of the latter; the authority may provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(8) All bonds issued by the authority under this article may be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this article.

(9) The venue for all bond validation proceedings pursuant to this article shall be Fulton County, and the Superior Court of Fulton County shall have exclusive final court jurisdiction over such proceedings.

(10) Bonds issued by the authority shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County and shall state the date on which said bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court of this state.

(11) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation shall be as follows for each bond, regardless of the denomination of such bond:

- (A) One dollar each for the first 100 bonds;
- (B) Twenty-five cents each for the next 400 bonds; and
- (C) Ten cents for each such bond over 500.

(12) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments, the bonds are made negotiable instruments within the meaning of and for all the purposes of Georgia law subject only to the provisions of the bonds for registration.

(13) Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(14) The authority, subject to such agreements with bondholders as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be canceled, at a price not in excess of the following:

(A) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date; or

(B) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption, plus accrued interest to the next interest payment date.

(15) In lieu of specifying the rate or rates of interest which bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint. (Code 1981, § 50-23-8, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following “property” in subparagraph (e)(3)(A) and a comma was inserted following “secured” in subparagraph (e)(3)(E).

Pursuant to Code Section 28-9-5, in 1990,

“original” was substituted for “originl” in paragraph (e)(10).

Editor’s notes. — Code Section 50-10-11, referred to in subdivision (e)(3)(I), was repealed by Ga. L. 1986, p. 705, § 4, effective April 2, 1986.

50-23-9. Review of contracts and agreements by Environmental Protection Division or Georgia Land Conservation Council.

(a) Except as otherwise provided by Article 6 of Chapter 5 of Title 12, the authority shall not enter into any contract or agreement with any local government with respect to the financing of any environmental facility pursuant to this article, unless the director of the Environmental Protection Division of the Department of Natural Resources shall have completed all existing statutory reviews and approvals with respect to such project. Nothing in this article shall be construed to diminish the full authority and responsibility of the director of the Environmental Protection Division of the Department of Natural Resources for existing statutory reviews and approvals.

(b) The authority shall not enter into any contract or agreement with any local government or the Department of Natural Resources with respect to the financing, by loan or grant, of any community land conservation project or state land conservation project pursuant to Chapter 22 of Title 36 unless the Georgia Land Conservation Council has approved the community land conservation project or state land conservation project and the chairperson has directed the authority to execute the approval decision of the Georgia Land Conservation Council. Nothing in this article shall be construed to

diminish the full authority and responsibility of the Georgia Land Conservation Council's existing statutory reviews and approvals. (Code 1981, § 50-23-9, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2006, p. 267, § 5/HB 1319; Ga. L. 2008, p. 644, § 2-4/SB 342.)

The 2008 amendment, effective July 1, 2008, in subsection (a), substituted "Except as otherwise provided by Article 6 of Chapter 5 of Title 12, the" for "The" at the beginning, inserted a comma following "Resources" near the middle, and inserted "of the Department of Natural Resources" near the end.

Cross references. — Community greenspace preservation, Ch. 22, T. 36.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, a comma was deleted following "Department of Natural Resources" in the first sentence of subsection (a).

50-23-10. Bonds of authority approved for investment and deposit by state, local governments, and others.

The bonds of the authority are made securities in which all public officials and bodies of the state and all municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of this state and all municipalities for any purposes for which the deposit of bonds or other obligations of this state are now or hereafter may be authorized. (Code 1981, § 50-23-10, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-11. Pledge of state not to alter or limit the rights of bondholders.

The State of Georgia does pledge to and agree with the holders of any bonds issued by the authority pursuant to this article that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders, are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders. (Code 1981, § 50-23-11, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-12. Personal liability of members of authority, officers, and employees.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, shall be subject to any liability resulting from:

(1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority;

(2) The construction, ownership, maintenance, or operation of any solid waste system, sewerage system, environmental facility, or water system owned by a local government; or

(3) Carrying out any of the powers expressly given in this article. (Code 1981, § 50-23-12, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1989, p. 1289, § 6; Ga. L. 1994, p. 1108, § 6.)

50-23-13. Liberal construction; bonds exempt from securities law; necessity of notice, proceeding, or publication; referendums.

The provisions of this article shall be liberally construed to effect the purposes of this article. The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, known as the "Georgia Uniform Securities Act of 2008." No notice, proceeding, or publication except those required in this article shall be necessary to the performance of any act authorized in this article; nor shall any such act be subject to referendum. (Code 1981, § 50-23-13, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 381, § 10/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted "'Georgia Uniform Securities Act of 2008'" for "'Georgia Securities Act of 1973'" at the end of the second sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "Chapter 5" was substituted for "Chapter 1" in the second sentence.

50-23-14. Bonds not indebtedness of state; guarantee of bonds by state.

No bonds, notes, or other obligations of and no indebtedness incurred by the authority shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt. (Code 1981, § 50-23-14, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1992, p. 6, § 50; Ga. L. 1994, p. 1108, § 6.)

50-23-15. Exemptions from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this article. For such reasons the state covenants with the holders from time to time of the bonds, notes, and other obligations issued under this article that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this article shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1981, § 50-23-15, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-16. Rights under federal Constitution.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this article shall be construed to remove any such rights. (Code 1981, § 50-23-16, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-17. Approval of bond issues and other obligations by state financing and investment commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of the Constitution of the State of Georgia of 1983 or its successor. (Code 1981, § 50-23-17, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-18. Liberal construction.

This article, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this article. (Code 1981, § 50-23-18, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6.)

50-23-19. Limitation on issue of bonds.

Nothing contained in this article shall permit the authority to issue bonds or revenue bonds at any time when the sum of:

(1) The highest aggregate annual debt service requirements for the then current fiscal year or any subsequent fiscal year for outstanding authority bonds or revenue bonds, including the proposed bonds or revenue bonds; and

(2) The highest annual debt service requirements for the then current fiscal year or any subsequent fiscal year on general obligation debt of the state issued for authority projects

exceeds 1 percent of the total revenue receipts, less refunds, of the state treasury in the fiscal year immediately preceding the year in which any such bond or revenue bond is to be issued; provided, however, that unless the director of the Water Supply Division of the authority has issued the certification provided for by Code Section 12-5-480, the authority, with the approval of the Governor and the commission established by Article VII, Section IV, Paragraph VII of the Constitution, may issue bonds for the purposes of Article 6 of Chapter 5 of Title 12 notwithstanding such limitations. (Code 1981, § 50-23-19, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 644, § 2-5/SB 342.)

The 2008 amendment, effective July 1, 2008, added the proviso at the end of this Code section.

50-23-20. Withholding state funds from local governments or nongovernmental entities failing to collect and remit amounts when due.

(a) In the event of a failure of any local government or nongovernmental entity to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government or nongovernmental entity, it shall be the duty of the authority to notify the director of the Office of Treasury and Fiscal Services who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government or nongovernmental entity until such local government or nongovernmental entity has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government or nongovernmental entity which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the

state. (Code 1981, § 50-23-20, enacted by Ga. L. 1986, p. 569, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 1108, § 6; Ga. L. 2008, p. 90, § 3-4/HB 1176.)

The 2008 amendment, effective July 1, 2008, inserted “or nongovernmental entity” throughout this Code section.

50-23-21. Grants for clean energy property; rules and regulations; annual report.

(a) As used in this Code section, the term:

(1) “Authority” means the Georgia Environmental Facilities Authority.

(2) “Clean energy property” includes any of the following:

(A) Solar energy equipment that uses solar radiation as a substitute for traditional energy for water heating, active and passive space heating and cooling, generating electricity, distillation, desalinization, or the production of industrial or commercial process heat, as well as related devices necessary for collecting, storing, exchanging, conditioning, or converting solar energy to other useful forms of energy;

(B) Energy Star certified geothermal heat pump systems;

(C) Energy efficient projects as follows:

(i) **LIGHTING RETROFIT PROJECTS.** “Lighting retrofit project” means a lighting retrofit system that employs dual switching (ability to switch roughly half the lights off and still have fairly uniform light distribution), delamping, daylighting, relamping, or other controls or processes which reduce annual energy and power consumption by 30 percent compared to the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004); and

(ii) **ENERGY EFFICIENT BUILDINGS.** “Energy efficient building” means for other than single-family residential property new or retrofitted buildings that are designed, constructed, and certified to exceed the standards set forth in the American Society of Heating, Refrigerating, and Air Conditioning Engineers 2004 standard (ASHRAE 90.1.2004) by 30 percent; and

(D) Wind equipment required to capture and convert wind energy into electricity or mechanical power as well as related devices that may be required for converting, conditioning, and storing the electricity produced by wind equipment.

(3) "Cost" means:

(A) In the case of clean energy property owned by a person, cost is the aggregate funds actually invested and expended by a person to put into service the clean energy property; and

(B) In the case of clean energy property a person leases from another, cost is eight times the net annual rental rate, which is the annual rental rate paid by the person less any annual rental rate received by the person from subrentals.

(4) "Installation" means the year in which the clean energy property is put into service and becomes eligible for a grant allowed by this Code section.

(b)(1) The authority may issue a grant to any person for the construction, purchase, or lease of clean energy property that is placed into service in this state, other than in single-family residential structures, between January 1, 2009, and December 31, 2012, subject to the provisions of this Code section.

(2) A person that receives a grant allowed under this Code section shall not be eligible to claim any tax credit under Code Section 48-7-29.14 or any other grant under this Code section with respect to the same clean energy property.

(3) A person shall not receive a grant allowed in this Code section for clean energy property the person leases from another unless such person obtains the lessor's written certification that the lessor will not receive a grant under this Code section or claim a credit under Code Section 48-7-29.14 with respect to the same clean energy property.

(4) Grants shall not be issued under this Code section except to effect participation in a federal government program which authorizes the use of federal funds for purposes of this Code section. In no event shall the total amount of grants allowed by this Code section exceed federal funds allocated by the authority for such purposes. No funds derived from any other sources shall be granted under this Code section.

(5)(A) Any person seeking any grant provided for under this Code section shall submit an application to the authority for approval of such grant. The authority shall promulgate the forms on which the application is to be submitted. The authority shall review such application and shall approve such application upon determining that it meets the requirements of this Code section within 60 days after receiving such application, subject to availability of funds as provided by paragraph (4) of this subsection.

(B) To apply for a grant allowed by this Code section, the person shall provide any information required by the authority. Every person

receiving a grant under this Code section shall maintain and make available for inspection by the authority any records that the authority considers necessary to determine and verify the amount of the grant to which the person is entitled. The burden of proving eligibility for a grant and the amount of the grant shall rest upon the applicant, and no grant shall be allowed to a person that fails to maintain adequate records or to make them available for inspection.

(C) The authority shall issue the grants on a first come, first served basis. In no event shall the aggregate amount of grants approved by the authority for all applicants under this Code section exceed the limitations specified in paragraph (4) of this subsection.

(6) Any grant allowed by paragraph (1) of this subsection shall not exceed the lesser of 35 percent of the cost of the clean energy property described in subparagraphs (a)(2)(A) through (a)(2)(D) of this Code section or the following grant amounts for any clean energy property:

(A) A ceiling of \$500,000.00 per installation applies to solar energy equipment for solar electric (photovoltaic), other solar thermal electric applications, and active space heating and wind equipment as described in subparagraphs (a)(2)(A) and (a)(2)(D) of this Code section;

(B) The sum of \$100,000.00 per installation applies to clean energy property related to solar energy equipment for domestic water heating as described in subparagraph (a)(2)(A) of this Code section which is certified for performance by the Solar Rating Certification Corporation, Florida Solar Energy Center, or by a comparable entity approved by the authority to have met the certification of Solar Rating Certification Corporation OG-100 or Florida Solar Energy Center-GO-80 for solar thermal collectors;

(C) For Energy Star certified geothermal heat pump systems as described in subparagraph (a)(2)(B) of this Code section, the sum of \$100,000.00;

(D) For a lighting retrofit project as described in division (a)(2)(C)(i) of this Code section, the sum of \$0.60 per square foot of the building with a maximum of \$100,000.00; and

(E) For an energy efficient building as described in division (a)(2)(C)(ii) of this Code section, the sum of the cost of energy efficient products installed during construction at \$1.80 per square foot of the building, with a maximum of \$100,000.00.

(c) The authority shall be authorized to adopt rules and regulations to provide for the administration of any grant provided by this Code section. Specifically, the authority shall create a mechanism to track and report the

status and availability of grants for the public to review at a minimum on a quarterly basis.

(d) The authority shall provide an annual report of:

(1) The number of persons that claimed the grants allowed in this Code section;

(2) The cost of clean energy property with respect to which grants were issued;

(3) The type of clean energy property installed and the location;

(4) A determination of associated energy and economic benefits to the state; and

(5) The total amount of grants allowed. (Code 1981, § 50-23-21, enacted by Ga. L. 2009, p. 153, § 1/HB 473.)

Effective date. — This Code section became effective May 22, 2009.

Code Section 28-9-5, in 2009, a comma was deleted following “subparagraphs (a)(2)(A) and (a)(2)(D)” in subparagraph (b)(6)(A).

Code Commission notes. — Pursuant to

PART 2

WATER SUPPLY DIVISION

Effective date. — This part became effective July 1, 2008.

50-23-25. “Division” defined.

As used in this part, the term “division” means the Water Supply Division of the Georgia Environmental Facilities Authority created by Code Section 50-23-26. (Code 1981, § 50-23-25, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.)

50-23-26. Creation of Water Supply Division; director.

There is created within the Georgia Environmental Facilities Authority a Water Supply Division. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division. (Code 1981, § 50-23-26, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.)

50-23-27. Powers, duties, and responsibilities.

The division shall have the authority and responsibility to:

(1) Administer this part;

(2) Coordinate with the Department of Natural Resources and with

other departments, divisions, agencies, or officials of this state or political subdivisions thereof and appropriate private and professional organizations in matters related to water supply. The division and any other department, educational institution, agency, or official of this state or political subdivision thereof which in any way would affect the administration or enforcement of this part or Article 6 of Chapter 5 of Title 12 shall be required to coordinate all such activities with the division to assure orderly and efficient administration and enforcement of this part;

(3) Do all things necessary to cooperate with the United States government and qualify for, accept, and disburse any public or private grant intended for the administration of this part;

(4) Apply for, receive, accept, and administer federal funds and programs made available to this state for the purposes of this part;

(5) Contract for services if such services cannot be satisfactorily performed by employees of the division or by any other state agency;

(6) Design and implement programs to assist local governing authorities and other entities in implementing water supply projects; and

(7) Exercise such powers and perform such duties as assigned or contracted to the division or the authority under Article 6 of Chapter 5 of Title 12. (Code 1981, § 50-23-27, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.)

50-23-28. Establishment of Georgia Reservoir Fund; administration; report.

(a) There shall be established the Georgia Reservoir Fund, to consist of proceeds of bonds issued under this article for purposes of this part, any moneys paid to the authority under intergovernmental contracts for purposes of this part, voluntary contributions to such fund, and any federal moneys deposited in such fund. Moneys which are restricted as to their usage, including, but not limited to, restrictions on the kinds of projects for which the moneys may be expended or loaned, on the entity that may receive grants or loans of such moneys, on the manner in which such moneys may be expended or loaned, and any other condition, limitation, or restriction, may nevertheless be deposited in the fund so long as any such restriction shall not prevent the moneys so deposited from being expended, loaned, or otherwise used in a manner that is consistent with the purposes of this part. All balances in the fund shall be deposited in interest-bearing accounts.

(b) The authority shall administer the fund and may use the fund for projects as defined by Code Section 12-5-471, in accordance with this article and Article 6 of Chapter 5 of Title 12.

(c) The authority shall prepare, by September 30 of each year, an accounting of the moneys received and expended from the fund for the most recently completed fiscal year. The report shall be made available electronically to the members of the General Assembly and shall be public record.

(d) Principal and interest payments on loans made from the fund may be deferred for a maximum of 20 years or until construction of the project is completed, whichever is later.

(e) The authority may expend moneys from the fund for the costs of planning, engineering, architectural, legal, title, fiscal, or economic investigation, studies, surveys, or designs without the designation of such funds to a specific project or the final regulatory or statutory review and approval of such project if the director determines that a reasonable expectation exists that the expenditure of such funds will further the purposes of this part or Article 6 of Chapter 5 of Title 12. (Code 1981, § 50-23-28, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.)

50-23-29. Rules and regulations.

The authority may promulgate and adopt rules and regulations to carry out the purposes of this part. (Code 1981, § 50-23-29, enacted by Ga. L. 2008, p. 644, § 2-6/SB 342.)

ARTICLE 2

DIVISION OF ENERGY RESOURCES

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 230.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 236. 73 C.J.S., Public Administrative Law and Procedure, § 107 et seq. 81A C.J.S., States, §§ 75, 76, 229, 249, 251.

50-23-30. “Division” defined.

As used in this article, the term “division” shall mean the Division of Energy Resources of the Georgia Environmental Facilities Authority. (Code 1981, § 50-23-30, enacted by Ga. L. 1994, p. 1108, § 6.)

50-23-31. Creation; executive director.

There is created within the Georgia Environmental Facilities Authority a Division of Energy Resources. The executive director of the authority or an employee of the authority designated by the director shall serve as the director of the division and shall have full authority over the operation, personnel, and facilities of the division. (Code 1981, § 50-23-31, enacted by Ga. L. 1994, p. 1108, § 6.)

50-23-32. Powers and duties.

(a) The Division of Energy Resources of the Georgia Environmental Facilities Authority shall have sole authority and responsibility for the administration of this article.

(b) The division shall have the authority and responsibility to do the following:

(1) Consult with other departments, agencies, or officials of this state or political subdivisions thereof and appropriate private and professional organizations in matters related to energy. Any other department, educational institution, agency, or official of this state or political subdivision thereof which in any way would affect the administration or enforcement of this article is required to coordinate all such activities with the division to assure orderly and efficient administration and enforcement of this article;

(2) Do all things necessary to cooperate with the United States government and qualify for, accept, and disburse any public or private grant intended for the administration of this article;

(3) Apply for, receive, accept, and administer federal funds and programs made available to the state for the purposes of this article;

(4) Contract for services if such services cannot be satisfactorily performed by employees of the division or by any other state agency;

(5) Enter into agreements to carry out energy related research and planning jointly with other states or the federal government where appropriate;

(6) Inform, educate, and provide materials to other agencies of the state or political subdivisions thereof and to the public on all energy related matters, with particular emphasis on energy consumption trends and their social, environmental, and economic impacts; conservation and energy efficiency; and alternative energy technologies;

(7) Monitor and assess the relationship and impact of international, federal, and regional energy policies on the state's energy policies and programs;

(8) Collect and analyze data relating to past, present, and future consumption levels for all sources of energy and report such findings to the Governor annually. Such reports shall make recommendations on actions which would further the purposes of energy conservation and management;

(9) Prepare and present to the government for approval a standby emergency plan setting forth actions to be taken in the event of an

impending serious shortage of energy or a threat to public health, safety, or welfare;

(10) Design and implement a program to encourage energy conservation and efficiency, to include, but not be limited to, public, commercial, industrial, governmental, and residential areas;

(11) Maintain awareness of all energy related research, with particular emphasis on alternative energy resources creating minimal environmental impact, which research could be of importance to the state's welfare for the purposes of providing constructive and supportive action;

(12) Solicit funds made available for the purposes of information, research studies, demonstrations, and projects of professional and civic orientation which are related to energy conservation and efficiency, the development and utilization of alternative energy technologies, and other appropriate energy related areas; and

(13) Design and implement programs to assist local governing authorities and other entities in implementing alternative energy projects. (Code 1981, § 50-23-32, enacted by Ga. L. 1994, p. 1108, § 6.)

Administrative rules and regulations. — Local government/non-profit energy conservation grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Environmental Facilities Authority, Chapter 267-3.

50-23-33. Employees.

Reserved. Repealed by Ga. L. 2006, p. 267, § 6/HB 1319, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-23-33, enacted by Ga. L. 1994, p. 1108, § 6.

50-23-34. Office of Energy Resources: Assets, funds, property, contracts, programs, obligations, interests transferred to authority.

Reserved. Repealed by Ga. L. 2006, p. 267, § 7/HB 1319, effective July 1, 2006.

Editor's notes. — This Code section was based on Code 1981, § 50-23-34, enacted by Ga. L. 1994, p. 1108, § 6.

50-23-35. Rules and regulations authorized.

The authority shall have the authority to promulgate and adopt rules and regulations to carry out the purposes of this article. (Code 1981, § 50-23-35, enacted by Ga. L. 1994, p. 1108, § 6.)

CHAPTER 24

DRUG-FREE WORKPLACE

Sec.		Sec.	
50-24-1.	Short title.	50-24-4.	Certification in contract.
50-24-2.	Definitions.	50-24-5.	Suspension, termination, or debarment of contractors.
50-24-3.	Contractors to provide drug-free workplace.	50-24-6.	Minimum standards established.

Code Commission notes. — Two 1990 Acts added a new Chapter 24 to Title 50. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1990, p. 1081 has retained the Chapter 24 designation and the chapter enacted by Ga. L. 1990, p. 1566 has been redesignated as Chapter 25.

RESEARCH REFERENCES

ALR. — Liability for discharge of at-will employee for refusal to submit to drug testing, 79 ALR4th 105.
Private employee's loss of employment because of refusal to submit to drug test as affecting right to unemployment compensation, 86 ALR4th 309.

50-24-1. Short title.

This chapter shall be known and may be cited as the “Drug-free Workplace Act.” (Code 1981, § 50-24-1, enacted by Ga. L. 1990, p. 1081, § 1.)

50-24-2. Definitions.

As used in this chapter, the term:

(1) “Contractor” means:

- (A) Any person engaged in the business of constructing, altering, repairing, dismantling, or demolishing buildings; roads; bridges; viaducts; sewers; water and gas mains; streets; disposal plants; airports; dams; water filters, tanks, towers, and wells; pipelines; and every other type of structure, project, development, or improvement coming within the definition of real or personal property, including, but not limited to, constructing, altering, or repairing property to be held either for sale or rental when the contract involves an expenditure by a state agency of at least \$25,000.00; or
- (B) Any person supplying goods, materials, services, or supplies pursuant to a contract or lease on behalf of a state agency as described in Code Section 50-5-64 when the contract involves an expenditure by the state agency of at least \$25,000.00.

(2) "Controlled substance" means a controlled substance as defined in Article 2 of Chapter 13 of Title 16.

(3) "Conviction" means a plea of guilty or a finding of guilt, including a plea of nolo contendere and regardless of treatment as a first offender under Article 3 of Chapter 8 of Title 42, or imposition of a sentence, or both, by any judicial body charged with a responsibility to determine violations of the federal or state criminal drug statutes.

(4) "Criminal drug statute" means any criminal statute involving the manufacture, sale, distribution, dispensation, use, or possession of any controlled substance or marijuana.

(5) "Drug-free workplace" means a site for the performance of work done in connection with a specific contract referred to in paragraph (1) of this Code section with a person, the employees of which person are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession, or use of any controlled substance or marijuana in accordance with the requirements of this chapter.

(6) "Employee" means the employee of a contractor directly engaged in the performance of work pursuant to the provisions of the contract referred to in paragraph (1) of this Code section.

(7) "Individual" means a contractor that has no more than one employee, including the contractor.

(8) "Marijuana" means the substance as defined in paragraph (16) of Code Section 16-13-21.

(9) "Person" means a corporation, a partnership, a business trust, an association, a firm, or any other legal entity except an individual.

(10) "Principal representative" means the governing board or the executive head of a state agency who is authorized to enter into a contract with a contractor on behalf of the state agency.

(11) "State agency" means any department, division, board, bureau, commission, or other agency of the state government or any state authority.

(12) "Subcontractor" means a person hired by a contractor on an independent basis rather than as an employee and who performs work for the contractor under a contract as provided under subparagraph (A) of paragraph (1) of this Code section. (Code 1981, § 50-24-2, enacted by Ga. L. 1990, p. 1081, § 1.)

50-24-3. Contractors to provide drug-free workplace.

(a) The principal representative of a state agency shall not enter into a contract with any contractor, other than an individual, unless the contractor certifies to the principal representative that:

(1) A drug-free workplace will be provided for the contractor's employees during the performance of the contract; and

(2) Each contractor who hires a subcontractor to work in a drug-free workplace shall secure from that subcontractor the following written certification: "As part of the subcontracting agreement with (contractor's name), (subcontractor's name) certifies to the contractor that a drug-free workplace will be provided for the subcontractor's employees during the performance of this contract pursuant to paragraph (7) of subsection (b) of Code Section 50-24-3."

(b) A contractor may satisfy the requirement for providing a drug-free workplace for employees by:

(1) Publishing a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

(2) Establishing a drug-free awareness program to inform employees about:

(A) The dangers of drug abuse in the workplace;

(B) The contractor's policy of maintaining a drug-free workplace;

(C) Any available drug counseling, rehabilitation, and employee assistance program; and

(D) The penalties that may be imposed upon employees for drug abuse violations;

(3) Providing each employee with a copy of the statement provided for in paragraph (1) of this subsection;

(4) Notifying each employee in the statement provided for in paragraph (1) of this subsection that as a condition of employment, the employee shall:

(A) Abide by the terms of the statement; and

(B) Notify the contractor of any criminal drug statute conviction for a violation occurring in the workplace within five days of the conviction;

(5) Notifying the contracting principal representative within ten days after receiving from an employee or a subcontractor a notice of conviction as provided under subparagraph (B) of paragraph (4) of this subsection or after otherwise receiving actual notice of such a conviction;

(6) Making a good faith effort on a continuing basis to provide a drug-free workplace for employees; and

(7) Requiring that such contractor include in any agreement or contract with a subcontractor a provision that such subcontractor will provide a drug-free workplace for his employees by complying with the provisions of paragraphs (1), (2), (3), (4), and (6) of this subsection and by notifying the contractor of any criminal drug statute conviction for a violation occurring in the workplace involving the subcontractor or its employees within five days of receiving notice of the conviction. The contractor will notify the contracting principal representative pursuant to paragraph (5) of this subsection. (Code 1981, § 50-24-3, enacted by Ga. L. 1990, p. 1081, § 1.)

50-24-4. Certification in contract.

The principal representative of a state agency shall not enter into a contract with an individual or a person as a contractor unless the contract includes a certification by the individual or person that the individual or person will not engage in the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana during the performance of the contract. (Code 1981, § 50-24-4, enacted by Ga. L. 1990, p. 1081, § 1.)

50-24-5. Suspension, termination, or debarment of contractors.

The principal representative of a state agency may suspend, terminate, or debar the contractor if the state agency determines that:

(1) The contractor or individual has made false certification under subsection (a) of Code Section 50-24-3; or

(2) The contractor has violated such certification by failing to carry out the requirements of Code Section 50-24-3. (Code 1981, § 50-24-5, enacted by Ga. L. 1990, p. 1081, § 1.)

50-24-6. Minimum standards established.

This chapter establishes minimum standards for contractors and in no way limits or restrains contractors from implementing additional procedures and policies having the objectives of achieving and maintaining a drug-free workplace. (Code 1981, § 50-24-6, enacted by Ga. L. 1990, p. 1081, § 1.)

CHAPTER 25

GEORGIA TECHNOLOGY AUTHORITY

Sec.		Sec.	
50-25-1.	Establishment of Georgia Technology Authority.	50-25-7.9.	"Person" defined; purchase of articles for personal or individual ownership prohibited; sale of articles for personal or individual ownership prohibited; violation a misdemeanor [Repealed].
50-25-2.	Membership.	50-25-7.10.	Annual state information technology report; requirements; standards.
50-25-3.	Administration; legal services.	50-25-7.11.	Authority of Governor; implementation by executive order.
50-25-4.	General powers.	50-25-7.12.	Joint development of budgeting and accounting system [Repealed].
50-25-5.	Access to records of state departments, agencies, boards, bureaus, commissions, and other authorities.	50-25-7.13.	Adoption of procedures to ensure compliance with United States copyright laws and applicable licensing restrictions.
50-25-5.1.	Chief information officer; appointment and removal; compensation; powers and duties.	50-25-8.	Tax exemption.
50-25-6.	Georgia Register.	50-25-9.	Jurisdiction of actions brought against authority.
50-25-7.	Sale of files of public information; receipt of data in electronic format from public; application of statutory restrictions on confidentiality to authority.	50-25-10.	Moneys received by authority deemed to be trust funds.
50-25-7.1.	Technology empowerment fund; appropriations; initiatives; steering committee.	50-25-11.	Chapter as supplemental and additional to other powers.
50-25-7.2.	Adherence to technical standards and specifications established by the authority.	50-25-12.	Ownership of data not affected.
50-25-7.3 through 50-25-7.6.	[Repealed.]	50-25-13.	Liberal construction of chapter.
50-25-7.7.	Conflicts of interest; violations; penalties.	50-25-14.	Distribution of legislative information.
50-25-7.8.	Contracts for purchases contrary to chapter shall be void; personal liability of official making such purchases; recovery of state funds [Repealed].	50-25-15.	Georgia Technology Authority Overview Committee created; membership; organization.
		50-25-16.	Inquiry and review.

Code Commission notes. — Two 1990 Acts added a new Chapter 24 to Title 50. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1990, p. 1081 has retained the Chapter 24 designation and the chapter enacted by Ga. L. 1990, p. 1566 has been redesignated as Chapter 25.

Administrative rules and regulations. —

Georgia Technology Authority, Official Compilation of the Rules and Regulations of the State of Georgia, Title 665.

Law reviews. — For note on 2000 amendments of O.C.G.A. §§ 50-25-1 to 50-25-4 and 2000 enactment of O.C.G.A. §§ 50-25-5.1 and 50-25-7.1 to 50-25-7.13, see 17 Ga. St. U.L. Rev. 280 (2000).

50-25-1. Establishment of Georgia Technology Authority.

(a) There is established the Georgia Technology Authority as a body corporate and politic, an instrumentality of the state, and a public corporation; and by that name the authority may contract and be contracted with and bring and defend actions. The Georgia Technology Authority shall be the successor in interest to the public corporation created by Ga. L. 1990, p. 1566, as amended from time to time thereafter, and known as the "GeorgiaNet Authority," and all rights, powers, and duties of that public corporation shall be vested in the Georgia Technology Authority, subject, however, to all debts, obligations, liabilities, and duties incurred by that public corporation.

(b) As used in this chapter, the term:

(1) "Agency" means every state department, agency, board, bureau, commission, and authority but shall not include any agency within the judicial branch of state government or the University System of Georgia and shall also not include any authority statutorily required to effectuate the provisions of Part 4 of Article 9 of Title 11.

(2) "Authority" means the Georgia Technology Authority as established in this chapter.

(3) "Board" means the board of directors for the Georgia Technology Authority.

(4) "Chairperson" means the chairperson of the Georgia Technology Authority.

(5) "Chief information officer" means the chief information officer of the State of Georgia provided for by Code Section 50-25-5.1.

(6) "File" means a group of data consisting of a collection of related records which concern one or more functions of an agency and which is treated as a single unit in an electronic data processing system.

(7) "GeorgiaNet Division" means the former GeorgiaNet Authority.

(8) "Local government" means any county, city, or consolidated government in this state.

(9) "Private sector" means any nongovernment, privately owned entity in this state.

(10) "Public safety radio services" means all radio services of state, county, or municipal governments, as defined in Part 89 of the Rules and Regulations of the Federal Communications Commission.

(11) "Record" means a group of related fields of data used to electronically store data about a subject, such as an employee, customer, vendor, or other entity, or a transaction.

(12) “Technology” or “technology resources” means hardware, software, and communications equipment, including, but not limited to, personal computers, mainframes, wide and local area networks, servers, mobile or portable computers, peripheral equipment, telephones, wireless communications, public safety radio services, facsimile machines, technology facilities including, but not limited to, data centers, dedicated training facilities, and switching facilities, and other relevant hardware and software items as well as personnel tasked with the planning, implementation, and support of technology.

(13) “Technology enterprise management” means methods for managing technology resources for all agencies, considering the priorities of state planners, with an emphasis on making communications and sharing of data among agencies feasible and ensuring opportunities of greater access to state services by the public.

(14) “Technology policy” means processes, methods, and procedures for managing technology, technology resources, and technology procurement.

(15) “Technology portfolio management” means an approach for analyzing and ranking potential technology investments based upon state priorities and a cost benefit analysis to include, but not be limited to, calculated savings, direct and indirect, and revenue generation related to technology expenditures and selecting the most cost-effective investments. The minimization of total ownership costs, i.e., purchase, operation, maintenance, and disposal, of technology resources from acquisition through retirement while maximizing benefits is to be emphasized.

(c) The purpose of the authority shall be to provide for technology enterprise management and technology portfolio management as defined in this chapter, as well as the centralized marketing, provision, sale, and leasing, or execution of license agreements for access on line or in volume, of certain public information maintained in electronic format to the public, on such terms and conditions as may be determined to be in the best interest of the state in light of the following factors:

(1) The public interest in providing ready access to public state information for individuals, businesses, and other entities;

(2) The public interest in providing ready access to state information for other governmental entities, so as to enhance the ability of such other governmental entities to carry out their public purposes;

(3) Fair and adequate compensation to the state for costs incurred in generating, maintaining, and providing access to state information;

(4) Cost savings to the state through efficiency in the provision of public information; and

(5) Such other factors as are in the public interest of the state and will promote the public health and welfare.

(d) The authority shall assist political subdivisions and other entities created by the Constitution or laws of this state, or by local governments, by setting forth policy initiatives for guidance in the use of technology to improve services, reduce costs, encourage technological compatibility, and promote economic development throughout the state.

(e) Services related to the marketing, provision, sale, and leasing or licensing of public information as provided in subsection (c) of this Code section shall continue to be marketed under the service mark of GeorgiaNet. (Code 1981, § 50-25-1, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 2000, p. 249, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 117, § 1/HB 312.)

50-25-2. Membership.

(a) The authority shall consist of 11 members as follows: two members appointed by the Lieutenant Governor; two members appointed by the Speaker of the House of Representatives; and seven members appointed by the Governor. The Governor shall designate a member of the authority to serve as chairperson of the authority. All of the aforesaid members shall be individuals employed in the private sector who shall have experience in technology issues concerning large public or private organizations or entities. The initial membership of the authority shall be appointed for terms of office as follows:

(1) The Lieutenant Governor shall appoint one member for a term of one year and one member for a term of three years;

(2) The Speaker of the House shall appoint one member for a term of one year and one member for a term of three years; and

(3) The Governor shall appoint four members for terms of one year and three members for a term of three years.

The terms of all succeeding members shall be for three years. The authority may elect a vice chairperson and a secretary and any other officers deemed appropriate. In addition to all other members provided for in this subsection, there shall be one nonvoting ex officio member of the authority who shall be appointed by and serve at the pleasure of the Chief Justice of the Supreme Court.

(b) Each member of the authority may be authorized by the authority to receive an expense allowance and reimbursement from funds of the authority in the same manner as provided for in Code Section 45-7-21. Except as specifically provided in this subsection, members of the authority shall receive no compensation for their services.

(c) Seven members of the authority shall constitute a quorum; and the affirmative votes of six members of the authority shall be required for any action to be taken by the authority.

(d) There shall be an executive director of the authority to be titled the chief information officer and to be selected in the manner and to have the powers and duties set forth in Code Section 50-25-5.1.

(e) The authority may make rules and regulations for its own government.

(f) The authority shall have perpetual existence. (Code 1981, § 50-25-2, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, §§ 1, 2; Ga. L. 2000, p. 249, § 8.)

50-25-3. Administration; legal services.

(a) The authority shall be assigned for administrative purposes to the Department of Administrative Services, as provided for in Code Section 50-4-3.

(b) The Attorney General shall provide legal services for the authority, in the same manner provided for in Code Sections 45-15-13 through 45-15-16. (Code 1981, § 50-25-3, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 2000, p. 249, § 9.)

50-25-4. General powers.

(a) The authority shall have the following powers:

(1) To have a seal and alter the same at its pleasure;

(2) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created;

(3) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority;

(4) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(5) To contract with state agencies or any local government for the use by the authority of any property, facilities, or services of the state or any

such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority; and such state agencies and local governments are authorized to enter into such contracts;

(6) To fix and collect fees and charges for data, media, and incidental services;

(7) To deposit or invest funds held by it in any state depository or in any investment which is authorized for the investment of proceeds of state general obligation bonds; and to use for its corporate purposes or redeposit or reinvest interest earned on such funds;

(8) To establish standards for agencies to submit information technology plans to the authority. Standards shall include without limitation content, format, and frequency of submission;

(9) Reserved;

(10) To set technology policy for all agencies except those under the authority, direction, or control of the General Assembly or state-wide elected officials other than the Governor;

(11) To establish and maintain official employee purchase programs for technology resources facilitated by and through the authority for state employees and public school employees of county or independent boards of education;

(12) To provide oversight and program management for all technology resources for projects exceeding a cumulative investment of \$1 million to accomplish goals of technology portfolio management;

(13) To develop such plans and reports as are deemed necessary and useful and to require agencies to submit periodic reports at such frequency and with such content as the board shall define;

(14) To prepare fiscal impact statements relating to necessary modifications and development of technology to support policies required by proposed legislation;

(15) To establish architecture for state technology infrastructure to promote efficient use of resources and to promote economic development;

(16) To provide processes and systems for timely and fiscally prudent management of the state's financial resources to include, without limitation, cash management;

(17) To establish advisory committees from time to time, including, without limitation, a standing advisory committee composed of representatives from agencies which shall make recommendations to the authority concerning such matters as policies, standards, and architecture;

(18) To coordinate with agencies, the legislative and judicial branches of government, and the Board of Regents of the University System of Georgia, regarding technology policy;

(19) To coordinate with local and federal governments to achieve the goals of the authority;

(20) To identify and pursue alternative funding approaches;

(21) To establish technology security standards and services to be used by all agencies;

(22) To conduct technology audits of all agencies;

(23) To facilitate and encourage the conduct of business on the Internet;

(24) To expand and establish policies necessary to ensure the legal authority and integrity of electronic documents;

(25) To provide and approve as part of the state technology plan an implementation plan and subsequent policies and goals designed to increase the use of telecommuting among state employees;

(26) To create a center for innovation to create applications of technology that will yield positive, measurable benefits to the state;

(27) To contract through the Department of Administrative Services for the lease, rental, purchase, or other acquisition of all technology resource related supplies, materials, services, and equipment required by the state government or any of its agencies and designate such contracts as mandatory sources of supply for agency purchases or to authorize any agency to purchase or contract for technology;

(28) To establish and enforce standard specifications which shall apply to all technology and technology resource related supplies, materials, and equipment purchased or to be purchased for the use of the state government or any of its agencies, which specifications shall be based on and consistent with industry accepted open network architecture standards;

(29) To establish specifications and standards for technology resources, which shall apply to all technology to be purchased, licensed, or leased by any agency;

(30) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority; and

(31) To do all things necessary or convenient to carry out the powers conferred by this chapter.

(b) The authority shall transfer to the general fund of the state treasury any funds of the authority determined by the authority to be in excess of

those needed for the corporate purposes of the authority. (Code 1981, § 50-25-4, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, § 3; Ga. L. 2000, p. 249, § 10; Ga. L. 2005, p. 117, § 2/HB 312; Ga. L. 2009, p. 133, § 1/HB 436.)

The 2009 amendment, effective April 21, 2009, in subsection (a), substituted "Reserved" for the former provisions of paragraph (a)(9), which read: "To provide and approve a technology plan to include strategic planning and direction for technology acquisition, deployment development, and obsolescence management as well as a com-

munications plan to manage costs for voice, video, data, and messaging services for all agencies. The state technology plan shall incorporate plans from agencies and other sources;" and inserted "develop such plans and reports as are deemed necessary and useful and to" near the beginning of paragraph (a)(13).

OPINIONS OF THE ATTORNEY GENERAL

Agencies under authority of elected official other than Governor may set own technology policy. — Agencies under the authority, direction, or control of a state-wide elected official other than the Governor may

set their own technology policy, but must contract through the Georgia Technology Authority for any technology resource purchase exceeding \$100,000. 2001 Op. Att'y Gen. No. 2001-8.

50-25-5. Access to records of state departments, agencies, boards, bureaus, commissions, and other authorities.

All state departments, agencies, boards, bureaus, commissions, and authorities are authorized to make available to the authority access to public records or data which are available in electronic format upon terms mutually agreed to by the authority and any such department, agency, board, bureau, commission, or authority; provided, however, that no department, agency, board, bureau, commission, or authority shall be required to do so. The authority shall reimburse the department, agency, board, bureau, commission, or authority for costs incurred in providing such public records or data. The judicial and legislative branches are authorized to likewise provide such access to the authority. (Code 1981, § 50-25-5, enacted by Ga. L. 1990, p. 1566, § 1.)

50-25-5.1. Chief information officer; appointment and removal; compensation; powers and duties.

(a) There is created the position of the chief information officer for the State of Georgia who shall be both appointed and removed by a vote of a majority of the full membership to which the authority is entitled. The authority shall determine the compensation of the chief information officer. The chief information officer shall serve as the executive director of the authority.

(b) Subject to the general policy established by the authority, the chief information officer shall have the following powers and duties in addition to those otherwise enumerated in this chapter:

(1) To supervise, direct, account for, organize, plan, administer, and execute the functions required of the chief information officer by the authority;

(2) To provide assistance to agency heads in evaluating information officer performance for each agency and in selection of candidates for such positions;

(3) To establish performance management standards, approved by the board regarding success of projects, agency technology performance, and authority performance;

(4) To submit an annual budget for approval and adoption by the board;

(5) To review periodic reports submitted by agencies;

(6) To hire officers, agents, and employees, prescribe their duties and qualifications, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director. The executive director and other employees of the authority shall be considered state employees in the unclassified service of the State Personnel Administration for the purposes of benefits administered by the merit system and for retirement purposes. Any officer or employee of the authority who is already a member of the Employees' Retirement System of Georgia by virtue of services with another employer shall be entitled to credit for his or her services and shall not suffer any loss of such credit to which he or she is otherwise entitled. There shall be paid from the funds appropriated or otherwise available for the operation of the Georgia Technology Authority all employer's contributions required under this chapter;

(7) To contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of attorneys, accountants, systems engineers, consultants, and advisers, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits; and

(8) To perform such other duties as the authority may direct from time to time. (Code 1981, § 50-25-5.1, enacted by Ga. L. 2000, p. 249, § 11; Ga. L. 2009, p. 133, § 2/HB 436; Ga. L. 2009, p. 745, § 2/SB 97.)

The 2009 amendments. — The first 2009 amendment, effective April 21, 2009, deleted “an annual and a three-year technology plan, updated annually, and” following

“submit” near the beginning of paragraph (b)(4). The second 2009 amendment, effective July 1, 2009, substituted “State Personnel Administration” for “State Merit System

of Personnel Administration" in the third sentence of paragraph (b)(6).

50-25-6. Georgia Register.

(a) As used in this Code section, the term:

(1) "Agency" means:

(A) The Governor in the exercise of all executive powers;

(B) Each other state officer, department, departmental unit, board, bureau, or commission expressly authorized by law to make rules and regulations; and

(C) The General Assembly.

(2) "Meeting" means an open and public meeting of an agency to which Chapter 14 of this title applies but shall not include a special meeting called on less than 24 hours' notice.

(3) "Period" means the time since the closing date of the previous issue of the *Georgia Register*.

(b) The authority shall electronically publish or cause to be published a publication entitled the *Georgia Register* which shall include information made available by the agencies through electronic media related to:

(1) Notice of adoption of all rules filed during the period;

(2) A summary of each rule proposed during the period and a statement of the manner in which a copy of the complete text of the rule may be obtained;

(3) The complete text of all rules adopted during the period;

(4) All agency meeting notices showing the time, place, and date of the meeting, and the text of rules proposed for consideration or a reference where the text of the proposed rules is published, including a statement of the manner in which a copy of the agenda may be obtained;

(5) All executive orders or proclamations issued by the Governor;

(6) A summary of all state contracts or requests for proposals of an amount more than \$100,000.00 and a statement of the manner in which a copy of the complete contract or request for proposal may be obtained;

(7) All official and unofficial Attorney General opinions and a summary of each opinion;

(8) The full text of agency emergency rules;

(9) Notice of land acquisitions or transfers with a value of more than \$50,000.00, including a statement of the manner in which more detailed information may be obtained;

- (10) For each session of the General Assembly:
 - (A) An abstract of each bill that is introduced;
 - (B) A synopsis of each bill that is enacted; and
 - (C) The status of each bill;
- (11) The hearing calendar of the Supreme Court; and
- (12) The hearing calendar of the Court of Appeals.

(c) No state appropriated funds shall be used for any purpose stated in this Code section. (Code 1981, § 50-25-6, enacted by Ga. L. 1992, p. 1431, § 1; Ga. L. 2006, p. 162, § 1/HB 1307.)

Editor's notes. — Ga. L. 1992, p. 1431, Code Section 50-25-7, pertaining to sale of § 1, effective July 1, 1992, renumbered files of public information. former Code Section 50-25-6 as present

50-25-7. Sale of files of public information; receipt of data in electronic format from public; application of statutory restrictions on confidentiality to authority.

(a) The authority shall have exclusive authority to sell or execute license agreements on behalf of the executive branch of state government for an entire file of public information in any electronic medium or format; provided, however, that nothing contained in this subsection shall preclude the Department of Transportation from exercising its authority under subparagraph (a)(2)(B) of Code Section 32-4-2, nor shall anything contained in this subsection preclude any department, agency, board, bureau, commission, or authority from selling individual records maintained in electronic format or otherwise to the public or other governmental agencies or entities or from selling or otherwise disseminating any data which the authority declines to sell; and the authority may likewise be authorized by the judicial and legislative branches to sell on their behalf entire files of public information.

(b) The authority shall be authorized to receive data in electronic format from members of the public for the purpose of transmitting such data electronically to various departments, agencies, and institutions of the state.

(c) All of the statutory restrictions on the confidentiality or use of any departmental data and all of the penalties for any violation thereof shall apply to the authority and its employees. (Code 1981, § 50-25-6, enacted by Ga. L. 1990, p. 1566, § 1; Ga. L. 1991, p. 425, § 4; Code 1981, § 50-25-7, as redesignated by Ga. L. 1992, p. 1431, § 1; Ga. L. 1994, p. 97, § 50; Ga. L. 2000, p. 1304, § 2.)

Editor's notes. — Ga. L. 1992, p. 1431, Code Section 50-25-8, pertaining to tax exemptions, § 1, effective July 1, 1992, renumbered former Code Section 50-25-7 as present

50-25-7.1. Technology empowerment fund; appropriations; initiatives; steering committee.

(a) The authority is authorized and directed to establish a technology empowerment fund to be administered by the authority. The fund shall consist of such moneys appropriated or otherwise available to the authority as the board may determine from time to time to deposit therein. Subject to the appropriations process, the decision-making and priority-setting responsibilities for allocating these funds are vested in the chief information officer and the director of the Office of Planning and Budget.

(b) The chief information officer is authorized to identify and select individual projects, initiatives, and systems to improve service delivery to be funded through the technology empowerment fund. Such projects shall demonstrate, to the satisfaction of the chief information officer, reduced costs through the use of technology. In identification and selection of such projects, initiatives, and systems, the chief information officer shall give priority to those which provide demonstrable cost savings and improved service delivery on a recurring basis through the employment of technology and training. Eligible projects, initiatives, and systems to receive disbursements from the technology empowerment fund may be selected from agency budget requests. Quarterly reports of the operations of the technology empowerment fund shall be required to be made to the board, the Office of Planning and Budget, the Senate Budget Office, and the House Budget Office to ensure proper oversight and accountability.

(c) Each project or initiative developed and supported from the technology empowerment fund shall employ technology that is compatible with the architecture and standards established by the authority and shall be accounted for by a discrete account established for the individual project or initiative item in the operating budget and capital budget.

(d) A steering committee composed of the chairperson of the House Appropriations Committee or his or her designee from among the membership of the committee, the chairperson of the Senate Appropriations Committee or his or her designee from among the membership of the committee, the director of the Office of Planning and Budget, the House Budget Office, the Senate Budget Office, the state auditor, and a representative from the Governor's office shall advise and consult with the chief information officer regarding initiatives to receive funding from the technology empowerment fund and shall receive quarterly reports from the chief information officer as to the status of funded projects. (Code 1981, § 50-25-7.1, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2008, p. VO1, § 1-21/HB 529.)

The 2008 amendment, effective January 28, 2008, substituted “the Senate Budget Office, and the House Budget Office” for “and the Legislative Budget Office” in the last sentence of subsection (b), and substituted “the House Budget Office, the Senate Budget Office” for “the legislative budget analyst” near the middle of subsection (d). See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

50-25-7.2. Adherence to technical standards and specifications established by the authority.

Nothing exempting any purchase from the competitive bidding laws set forth in Part 1 of Article 3 of Chapter 5 of this title shall exempt any technology resource purchase from the technical standards and specifications established by the authority unless specifically provided by action of the authority; provided, however, that technical standards established by the authority shall not conflict with mandated federal technical standards or requirements associated with the state administration of federally funded programs. The Department of Administrative Services shall not knowingly issue a procurement pursuant to the provisions of Part 1 of Article 3 of Chapter 5 of this title that does not adhere to the technical standards and specifications established by the authority unless specifically authorized to do so by the authority. (Code 1981, § 50-25-7.2, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p. 117, § 3/HB 312.)

OPINIONS OF THE ATTORNEY GENERAL

Statute applies to agencies under authority of elected official other than Governor. — Agencies under the authority, direction, or control of a state-wide elected official other than the Governor may set their own tech-

nology policy, but must contract through the Georgia Technology Authority for any technology resource purchase exceeding \$100,000. 2001 Op. Att’y Gen. No. 2001-8.

50-25-7.3 through 50-25-7.6.

Reserved. Repealed by Ga. L. 2005, p. 117, §§ 4-7/HB 312, effective July 1, 2005.

Editor’s notes. — These Code sections 50-25-7.4, 50-25-7.5, 50-25-7.6 enacted by Ga. L. 2000, p. 249, § 12.

50-25-7.7. Conflicts of interest; violations; penalties.

(a) Neither the executive director nor any employee of the authority shall be financially interested or have a personal beneficial interest in an amount greater than 1 percent ownership interest in any firm, corporation, partnership, or association which is involved either directly or indirectly in the purchase of or contract for any materials, equipment, or supplies, or an

ownership interest greater than 1 percent in any such firm, corporation, partnership, or association furnishing any such supplies, materials, or equipment to agencies or the authority. Except as provided in subsection (b) of this Code section, it shall be unlawful for the executive director or any of his or her assistants or any employee of the authority to accept or receive, directly or indirectly, from any person, firm, or corporation to whom any contract may be awarded any money or anything of more than nominal value or any promise, obligation, or contract for future reward or compensation.

(b) Nothing in this Code section shall preclude the executive director or any of his assistants or any employee of the authority from attending seminars, courses, lectures, briefings, or similar functions at any manufacturer's or vendor's facility or at any other place if any such seminar, course, lecture, briefing, or similar function is for the purpose of furnishing the executive director, assistant, or employee with knowledge and information relative to the manufacturer's or vendor's products or services and is one which the executive secretary to the Governor determines would be of benefit to the authority and to the state. In connection with any such seminar, course, lecture, briefing, or similar function, nothing in this Code section shall preclude the executive director, assistant, or employee from receiving meals from a manufacturer or vendor. Nothing in this Code section shall preclude the executive director, assistant, or employee from receiving educational materials and business related items of not more than nominal value from a manufacturer or vendor.

(c) Nothing contained in this Code section shall permit the executive director, assistant, or employee to accept free travel from the manufacturer or vendor outside the State of Georgia or free lodging in or out of the State of Georgia.

(d) Any person who violates subsection (a) of this Code section shall be guilty of a misdemeanor and shall be removed from office. (Code 1981, § 50-25-7.7, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2007, p. 88, § 1/SB 280.)

The 2007 amendment, effective May 11, 2007, in subsection (a), in the first sentence, substituted "a personal beneficial interest in an amount greater than 1 percent ownership interest in any firm, corporation, partnership, or association which is involved" for

"any personal beneficial interest" near the beginning and substituted "or an ownership interest greater than 1 percent in any such firm" for "nor in any such firm" in the middle.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Violation of O.C.G.A. § 50-25-7.7(a) is not an offense designated as one that re-

quires fingerprinting. 2000 Op. Att'y Gen. No. 2000-11.

50-25-7.8. Contracts for purchases contrary to chapter shall be void; personal liability of official making such purchases; recovery of state funds.

Reserved. Repealed by Ga. L. 2005, p. 117, § 8/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.8, enacted by Ga. L. 2000, p. 249, § 12.

50-25-7.9. "Person" defined; purchase of articles for personal or individual ownership prohibited; sale of articles for personal or individual ownership prohibited; violation a misdemeanor.

Reserved. Repealed by Ga. L. 2005, p. 117, § 9/HB 312, effective July 1, 2005.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.9, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2001, p. 867, § 1.

50-25-7.10. Annual state information technology report; requirements; standards.

(a) The executive director shall publish an annual state information technology report that shall include:

(1) A report on the state's current and planned information technology expenditures, in cooperation with the Office of Planning and Budget and the state accounting officer, that shall include, but not be limited to, line-item detail expenditures on systems development, personal services, and equipment from the previous fiscal year and anticipated expenditures for the upcoming fiscal year;

(2) A prioritization of information technology initiatives to address unmet needs and opportunities for significant efficiencies or improved effectiveness within the state information technology enterprise; and

(3) A prioritized funding schedule for all major projects or initiatives, as well as cost estimates of the fiscal impact of the recommended information technology initiatives.

The state information technology report shall be submitted to the Governor, the General Assembly, and the board on or before October 1 of each year. The authority may adopt an accrual method of accounting. The authority shall not be required to distribute copies of the annual report to members of the General Assembly, but shall notify the members of the availability of the report in the manner in which it deems to be the most effective and efficient.

(b) Agencies shall be required to submit information technology reports to the authority not more than twice annually and with such content as the

board shall define. The authority shall establish standards for agencies to submit the reports or updates. Standards shall include, without limitation, content, format, and frequency of updates. (Code 1981, § 50-25-7.10, enacted by Ga. L. 2009, p. 133, § 3/HB 436.)

Effective date. — This Code section became effective April 21, 2009.

Editor's notes. — This Code section, formerly concerning the annual reporting requirement and the contents of that report, was repealed by Ga. L. 2009, p. 133, § 3,

effective April 21, 2009, and was based on Code 1981, § 50-25-7.10, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p. 694, § 15/HB 293; Ga. L. 2005, p. 1036, § 47/SB 49.

50-25-7.11. Authority of Governor; implementation by executive order.

The Governor shall have the authority to transfer the technology resources as provided in this chapter of all state agencies, except those under the authority, direction, or control of the General Assembly or state-wide elected officials other than the Governor, to the authority. This Code section shall be implemented by executive order of the Governor, and the Governor shall have the authority to implement this Code section in whole or in part, in phases or stages, or in any manner or sequence which he or she may deem appropriate. In making such transfer, the Governor shall consult with the head of the agency affected and shall assure that the transfer shall not interrupt such agency's services. (Code 1981, § 50-25-7.11, enacted by Ga. L. 2000, p. 249, § 12.)

50-25-7.12. Joint development of budgeting and accounting system.

Reserved. Repealed by Ga. L. 2009, p. 133, § 4/HB 436, effective April 21, 2009.

Editor's notes. — This Code section was based on Code 1981, § 50-25-7.12, enacted by Ga. L. 2000, p. 249, § 12; Ga. L. 2005, p.

694, § 16/HB 293; Ga. L. 2005, p. 1036, § 48/SB 49.

50-25-7.13. Adoption of procedures to ensure compliance with United States copyright laws and applicable licensing restrictions.

(a) The authority shall adopt procedures to ensure that the authority and agencies do not acquire, reproduce, distribute, or transmit computer software in violation of United States copyright laws and applicable licensing restrictions.

(b) The authority shall establish procedures to ensure that each agency has present on its computers and uses only computer software that complies with United States copyright laws and applicable licensing restrictions. These procedures may include, without limitation:

(1) Preparing agency inventories of the software present on its computers;

(2) Determining what computer software the agency has the authorization to use; and

(3) Developing and maintaining adequate record-keeping systems. (Code 1981, § 50-25-7.13, enacted by Ga. L. 2000, p. 249, § 12.)

RESEARCH REFERENCES

ALR. — Copyright protection of computer programs, 180 ALR Fed. 1.

50-25-8. Tax exemption.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and are public purposes and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this chapter. The authority shall be required to pay no taxes or assessments upon any property acquired or under its jurisdiction, control, possession, or supervision. The tax exemption provided for in this Code section shall include an exemption from all sales and use tax on property purchased or used by the authority. (Code 1981, § 50-25-7, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-8, as redesignated by Ga. L. 1992, p. 1431, § 1; Ga. L. 2009, p. 153, § 1C/HB 473.)

The 2009 amendment, effective May 22, 2009, added the last sentence.

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, renumbered

former Code Section 50-25-8 as present Code Section 50-25-9, pertaining to jurisdiction of actions.

50-25-9. Jurisdiction of actions brought against authority.

Any action against the authority shall be brought in the Superior Court of Fulton County, Georgia, and such court shall have exclusive, original jurisdiction of such actions. (Code 1981, § 50-25-8, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-9, as redesignated by Ga. L. 1992, p. 1431, § 1.)

Editor's notes. — Ga. L. 1992, p. 1431, § 1, effective July 1, 1992, renumbered former Code Section 50-25-9 as present

Code Section 50-25-10, pertaining to moneys received by the authority.

50-25-10. Moneys received by authority deemed to be trust funds.

All moneys received by the authority pursuant to this chapter shall be deemed to be trust funds to be held and applied solely as provided in this chapter. (Code 1981, § 50-25-9, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-10, as redesignated by Ga. L. 1992, p. 1431, § 1.)

Editor's notes. — Ga. L. 1992, p. 1431, Code Section 50-25-11, pertaining to other powers.
§ 1, effective July 1, 1992, renumbered former Code Section 50-25-10 as present

50-25-11. Chapter as supplemental and additional to other powers.

The foregoing Code sections of this chapter shall be deemed to provide an additional and alternative method for the doing of things authorized thereby and shall be regarded as supplemental and additional to powers conferred by the Constitution and laws of the State of Georgia and shall not be regarded as in derogation of any powers now existing. (Code 1981, § 50-25-10, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-11, as redesignated by Ga. L. 1992, p. 1431, § 1.)

50-25-12. Ownership of data not affected.

Nothing in this chapter shall be deemed to effect a transfer of ownership of any data from any department, agency, board, bureau, commission, or authority to the authority. (Code 1981, § 50-25-11, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-12, as redesignated by Ga. L. 1992, p. 1431, § 1.)

50-25-13. Liberal construction of chapter.

This chapter, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof. (Code 1981, § 50-25-12, enacted by Ga. L. 1990, p. 1566, § 1; Code 1981, § 50-25-13, as redesignated by Ga. L. 1992, p. 1431, § 1.)

50-25-14. Distribution of legislative information.

(a) The authority shall provide for the distribution in electronic format of the legislative information provided to the authority pursuant to Code Section 28-3-24.1. Such information may be made available in a dial-up bulletin board format or in such other formats as may be determined to be appropriate by the authority.

(b) Such legislative information shall be provided free of charge to Internet users, public schools, their students and faculty, and to public libraries and their patrons. When PeachNet becomes available to an individual school or library, such school or library may have the option of connection to PeachNet and may then receive such legislative information from GeorgiaNet through PeachNet free of charge. For this purpose, "free of charge" may include the provision of legislative information without charge. For this purpose, "public schools" may include all schools operated by this state's local public school systems, all units of the University System of Georgia, and all units of the Technical College System of Georgia. For

this purpose, “public libraries” may include all city, county, and regional public libraries. (Code 1981, § 50-25-14, enacted by Ga. L. 1995, p. 720, § 2; Ga. L. 1996, p. 1300, § 2; Ga. L. 2008, p. 335, § 10/SB 435.)

The 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” in the fourth sentence of subsection (b).

50-25-15. Georgia Technology Authority Overview Committee created; membership; organization.

(a) The Georgia Technology Authority Overview Committee is created. The committee shall consist of three members of the House of Representatives appointed by the Speaker of the House and three members of the Senate appointed by the President of the Senate. The members shall serve for terms as members of the committee concurrent with their terms of office as members of the General Assembly. Members of the committee shall be appointed during the first 30 days of each regular legislative session which is held immediately following the election of members of the General Assembly; provided, however, that an appointment to fill any vacancy on the committee may be made at any time.

(b) The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker as cochairperson of the committee. The President of the Senate shall designate one of the members appointed by the President of the Senate as cochairperson of the committee. The members designated as cochairpersons shall serve for terms as such officers concurrent with their terms as members of the committee. Other than the cochairpersons provided for in this subsection, the committee shall provide for its own organization. (Code 1981, § 50-25-15, enacted by Ga. L. 2002, p. 974, § 1.)

50-25-16. Inquiry and review.

The committee shall periodically inquire into and review the operations, contracts, financing, organization, and structure of the Georgia Technology Authority, as well as periodically review and evaluate the success with which said authority is accomplishing its legislatively created purposes. (Code 1981, § 50-25-16, enacted by Ga. L. 2002, p. 974, § 1.)

CHAPTER 26

HOUSING AND FINANCE AUTHORITY

Sec.		Sec.	
50-26-1.	Short title.	50-26-12.	Payment of bond proceeds; pledges of proceeds for payment of bond.
50-26-2.	Legislative findings and declaration of necessity.	50-26-13.	Power to secure issuance of bonds by trust agreement or indenture; contents of trust agreement or indenture.
50-26-3.	Substitution of Georgia Housing and Finance Authority for Georgia Residential Finance Authority.	50-26-14.	Moneys received deemed trust funds; pledge of assets, funds, and properties for payment of bonds.
50-26-4.	Definitions.	50-26-15.	Annual and periodic audits and reports required.
50-26-5.	Creation of authority; composition; election and terms of officers; expense allowance; delegation of power; executive director; use of funds; legal services provided by Attorney General.	50-26-16.	Termination of authority.
50-26-6.	Limitation on liability.	50-26-17.	Powers as to real property; reverse equity mortgages; sale of qualified mortgage bonds; administration of alternate funds; authority to issue.
50-26-7.	Powers of authority vested in board of directors; quorum; action taken by majority.	50-26-18.	Facilitating economic development for enterprises.
50-26-8.	Powers of authority.	50-26-19.	Financing acquisition, construction, and equipping of health care facilities.
50-26-9.	Power to issue bonds and incur indebtedness; exemption from taxation.	50-26-20.	Competitive bidding on contracts not required.
50-26-10.	Obligations not subject to "Georgia Uniform Securities Act of 2008"; payment of operating costs; authority's revenue; bond anticipation notes; terms of bond; replacement of bond; validation; interest rates.	50-26-21.	Transfer of assets and obligations of Hospital Financing Authority to authority.
50-26-11.	Bonds as securities.	50-26-22.	Transfer of personnel to Department of Community Affairs.

50-26-1. Short title.

This chapter shall be known and may be cited as the "Georgia Housing and Finance Authority Act." (Code 1981, § 50-26-1, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-2. Legislative findings and declaration of necessity.

(a) The General Assembly finds that:

(1) There exists an inadequate supply of, and a pressing need for, financing and financial assistance to ensure the provision or preservation of safe, decent, energy efficient, and affordable housing and an adequate system of housing finance for housing and housing related concerns within this state;

(2) There exists an inadequate supply of, and a pressing need for, financing and financial assistance to enterprises which desire to locate or improve or expand in the state, particularly those enterprises which desire to locate in the more rural areas of the state; and

(3) There exists an inadequate supply of, and a pressing need for, financing and financial assistance for health equipment and facilities and for health care services at lower than prevailing costs and a need to make this financing available to the largest number of hospitals feasible, including, but not limited to, those hospitals which serve disproportionately high numbers of indigent patients.

(b) It is declared to be the public policy of this state to promote the health, welfare, safety, morals, and economic security of its citizens through the retention of existing employment and alleviation of unemployment in all phases of enterprise; housing and health care; the elimination of the shortage of and the preservation of safe, decent, energy efficient, and affordable housing; and the elimination of the shortage of and the preservation of capital for housing finance.

(c) The General Assembly finds that the public policies of the state as set forth in this Code section cannot be fully attained without the use of public financing and financial assistance, either direct or indirect; that such public financing can best be provided by the creation of a state housing and finance authority with comprehensive and extensive powers therein, which powers shall include, but not be limited to, the power to issue bonds or revenue bonds to provide financing for enterprises, for housing, for housing finance, and for health facilities; and that all of the foregoing are public purposes and uses for which public moneys may be borrowed, expended, advanced, loaned, and granted.

(d) It is the intent of the General Assembly to create an instrumentality that can facilitate economic development, housing and housing finance, and financing for health facilities and health care services throughout the state through its ability to access global capital markets and thereby provide credit to worthy businesses engaged in enterprises and located in or desiring to locate in this state or to provide housing or housing finance or financing for health facilities and health care services in this state on terms competitive with those available to businesses engaged in enterprises or available to those involved in housing or housing finance or the financing of health facilities that are able to access directly such capital markets.

(e) It is further the intent of the General Assembly that the authority created by this chapter work directly with and assist financial institutions and local development authorities in this state in creating, offering, delivering, and servicing such additional financing alternatives to businesses engaged in enterprises and to businesses and individuals involved in housing or housing finance or the financing of health facilities and health

care services. (Code 1981, § 50-26-2, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 1.)

Cross references. — Provision that agricultural or farming operations, places, establishments, or facilities shall not become a nuisance as result of changed conditions in vicinity of such operations, places, establishments, or facilities, § 41-1-7.

Law reviews. — For article, “Financing Affordable Housing in Georgia: The Possibility of a Dedicated Revenue Source,” see 13 Ga. St. U.L. Rev. 363 (1996).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 975, which was subsequently repealed but was succeeded by provisions in this Code section, are included in the annotations for this Code section.

Purpose. — Georgia Residential Finance Authority was established by the General

Assembly in order to encourage private investment in the building and rehabilitation of low income housing by providing mortgage loans at low interest rates to eligible low and moderate income borrowers. Rich v. State, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1974, p. 975).

RESEARCH REFERENCES

Am. Jur. 2d. — 40A Am. Jur. 2d, Housing Laws and Urban Redevelopment, § 1 et seq. 56 Am. Jur. 2d, Municipal Corporations,

Counties, and Other Political Subdivisions, § 516. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 104, 105.

50-26-3. Substitution of Georgia Housing and Finance Authority for Georgia Residential Finance Authority.

The authority shall receive all assets of, and the authority shall be responsible for any contracts, leases, agreements, or other obligations of, the Georgia Residential Finance Authority. The authority is substituted as a party to any such contract, agreement, lease, or other obligation and is responsible for performance thereon as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations. (Code 1981, § 50-26-3, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-4. Definitions.

As used in this chapter, the term:

(1) “Authority” means the Georgia Housing and Finance Authority or any subsidiary corporation created by the board of directors of the Georgia Housing and Finance Authority pursuant to this chapter.

(2) “Bonds” or “revenue bonds” means any bonds, revenue bonds, notes, interim certificates, bond or revenue anticipation notes, or other evidences of indebtedness of the authority issued under this chapter, including, without limitation, obligations issued to refund any of the

foregoing, notwithstanding that such bonds may be secured by a mortgage or the full faith and credit of a participating provider, health care facility, business, enterprise, or any local government.

(3) “Business” means any lawful activity engaged in for profit or not for profit, whether organized as a corporation; a partnership, either general or limited; a sole proprietorship; or otherwise.

(4) “Cost of project,” “cost of any project,” or “cost of an enterprise” means, as the context may require, all, including but without limiting the generality of the foregoing, of the following:

(A) All costs of acquisition, by purchase or otherwise, and all costs of installation, modification, repair, reconditioning, renovation, remodeling, extension, rehabilitation, or preservation incurred in connection with any project or part of any project;

(B) All costs of real property, fixtures, equipment, or personal property used in or in connection with or necessary or convenient for any project or any facility or facilities related thereto, including, but not limited to, cost of land, interests in land, options to purchase, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates or the cost of securing any of the foregoing; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in connection with or necessary or convenient for any project or facility;

(C) All financing charges, including, but not limited to, premiums and prepayment penalties; interest accrued or to accrue prior to and up to three years after the acquisition, installation, financing, or commencement of a project and any other cost related to a project up to three years after such acquisition, installation, financing, refinancing, or commencement; any loan or loan guarantee fees; and any fees paid to or which accrue to the authority regardless of the timing of such fees, prior to, during the operation of, or after the acquisition, installation, financing, refinancing, or commencement of a project;

(D) The cost of architectural, engineering, legal, financing, surveying, planning, environmental reports and inspections, accounting services, and any and all other necessary technical personnel or other expenses necessary or incident to planning, providing, or determining the need for or the feasibility or practicability of a project or financial assistance to or financing of a project;

(E) All fees for legal, accounting, bond, underwriting, trustee, paying agent, option provider, credit enhancement, and fiscal agent services for bondholders under any bond resolution, trust agreement, indenture, or similar instrument or agreement and all expenses incurred by any of the above;

(F) The cost of plans and specifications for any project;

(G) The cost of title insurance and title examinations with respect to any project;

(H) Administrative costs, expenses, and fees rendered or incurred with respect to any project;

(I) The cost of the establishment of any reserves, including, but not limited to, any sinking fund and debt service reserves;

(J) All costs of servicing any loans made or acquired;

(K) The cost of the authority incurred in connection with providing a project, including reasonable sums to reimburse the authority for time spent by its agents or employees in providing and financing a project; and

(L) The cost paid or incurred for the administration of any program for the purchase or lease of or the making of loans for a project by the authority and any program for the sale or lease of or making of loans for a project to any participating provider, business, enterprise, local government, or any other person.

(5) "Enterprise" means a business engaged in manufacturing, producing, processing, assembling, repairing, extracting, warehousing, handling, or distributing any agricultural, manufactured, mining, or industrial product or any combination of the foregoing; a business engaged in furnishing or facilitating communications, computer services, research, or transportation; a business engaged in construction; and corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination that involves, in each case, either the creation of new or additional employment, the retention of existing employment or payroll, or the increase of average payroll for employees of such enterprise; provided, however, that a shopping center, retail store or shop, or other similar undertaking which is solely or predominantly of a commercial retail nature shall not be an enterprise for the purposes of this chapter.

(6) "Facilities" means any real property, personal property, or mixed property of any and every kind.

(6.1) "Health care services" means any medical, health care, or health care related services provided by a health care provider licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31, including, without limitation, health care services for indigent patients whether or not such services are supported directly or indirectly, and in whole or in part, through any payment or reimbursement program of any federal, state, or local governmental entity, agency, instrumentality, or authority.

(6.2) "Health facility" means any nonprofit health care facility which is licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31, owned or operated by a participating provider, and utilized, directly or indirectly, in health care, medical research, or the training or teaching of health care personnel.

(7) "Housing" means a specific work or undertaking, whether acquisition, new construction, or rehabilitation, which is: (A) designed or financed for the primary purpose of providing safe, decent, energy efficient, appropriate, and affordable dwelling accommodations for persons and families of low or moderate income; or (B) designed or financed for special needs populations, including, but without limiting the generality of the foregoing, students, the aged, the infirm, the mentally disabled, the mentally ill, and the physically disabled; such undertakings may include any buildings, land, equipment, facilities, or other real or personal properties which are necessary, convenient, or desirable appurtenances, such as, but not limited to, site preparation, landscaping, and other nonhousing facilities such as recreational, administrative, health care, commercial, community, and staff facilities as the authority deems incidental, necessary, convenient, or desirable appurtenances; retirement homes, centers, and related facilities; nursing homes and related facilities; residential care facilities for the elderly or disabled; and long-term or life-care facilities for the elderly or disabled; or (C) without regard to income, for those geographic areas in which, in the opinion of the authority, the development, preservation, or improvement of housing is necessary for the purposes of: (i) economic development or expansion; or (ii) retaining in or attracting to such area qualified human resources essential to industrial, business, commercial, and residential operations and development. Such undertakings may be either single-family dwellings or multifamily dwellings, energy improvements thereto, or other improvements thereto and may include cooperatives, condominiums, transitional housing, homeless shelters, single-room occupancy housing, and any other building which provides residential opportunities.

(8) "Housing finance" means the purchase or acquisition of mortgages or participations therein; the making of loans or grants for housing; the administration of federal housing programs; the underwriting, servicing, and administration of mortgages or participations therein; and the allocation and administration of tax credits pertaining to housing.

(9) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(10) "Operating capital" means the cost of general operation and administration of a business for a temporary period, not to exceed one year.

(11) "Participating provider" means a nonprofit person, corporation, municipal corporation, public corporation, or political subdivision or other nonprofit entity, public or private, which:

(A) Is a hospital authority or is affiliated with a hospital authority organized and existing under the provisions of Article 4 of Chapter 7 of Title 31; or

(B) Owns or operates, directly or indirectly, or is affiliated with, at least one nonprofit health facility which is licensed as a hospital by the Department of Community Health under Article 1 of Chapter 7 of Title 31

and which contracts under this chapter with the authority for the financing, refinancing, lease, or other acquisition of a project.

(12) "Project" includes:

(A) Housing and facilities used in connection therewith;

(B) Housing finance;

(C) The acquisition, construction, or equipping of a health facility;

(D) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation, provided that none of the improvements described in this sentence shall be the primary purpose of any project;

(E) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities;

(F) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control facilities which the authority has determined is necessary for the operation of the industry or industries which the same is to serve and

which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "air pollution control facility" means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that, for the purpose of this subparagraph, the term "water pollution control facility" means any property used, in whole or in substantial part, to abate or control water pollution or contamination by removing, altering, disposing, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(G) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which the authority has determined is necessary for the operation of the industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term "sewage disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term "solid waste disposal facility" means any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste; for the purposes of this subparagraph, the term "solid waste" means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; and for the purposes of this subparagraph, the word "garbage" includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and the word "refuse" includes all nonputrescible wastes;

(H) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment oppor-

tunities in this state, and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in this paragraph, which existing or proposed project is used or intended to be used by the authority or by such business or charitable corporation, association, or similar entity;

(ii) A separate office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state; or

(iii) Any real or personal property to be used by a charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state;

(I) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use by an enterprise;

(J) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such uses thereof would further the public purpose of this chapter;

(K) The acquisition, construction, improvement, modification, or expansion of a planned community development; and

(L) The financing for the provision of health care services.

(13) "State" means the State of Georgia. (Code 1981, § 50-26-4, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 2-8; Ga. L. 2009, p. 453, § 1-4/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Community Health" for "Department of Human Resources" in paragraphs (6.1) and (6.2), and in subparagraph (11)(B).

50-26-5. Creation of authority; composition; election and terms of officers; expense allowance; delegation of power; executive director; use of funds; legal services provided by Attorney General.

(a) There is created a body corporate and politic to be known as the Georgia Housing and Finance Authority which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function.

(b) The authority is assigned to the Department of Community Affairs for administrative purposes only.

(c) The authority shall consist of the same persons who comprise the Board of Community Affairs. The members are subject to the code of ethics covering members of boards, commissions, and authorities as contained in Code Sections 45-10-3 through 45-10-5 and are subject to removal for violation of the code of ethics as provided in those Code sections. Any vacancy created by any such removal for cause shall be filled by the Governor. Each member shall serve under the same terms and conditions as provided for in Code Section 50-8-4.

(d) The terms of all members of the authority serving immediately prior to July 1, 1996, shall expire effective July 1, 1996.

(e) At each July meeting, the authority shall elect from its membership a chair, a vice chair, a secretary, and such other officers as it may determine from time to time. Officers shall serve for a term of one year beginning with their election and qualification and ending with the election and qualification of their respective successors. No person shall hold the same office for more than one consecutive term, and no member of the authority shall hold more than any one office of the authority.

(f) The members of the authority shall receive the same expense allowance per day as that received by members of the General Assembly, plus actual transportation expenses incurred while traveling by public carrier or the allowance authorized for state officials and employees for the use of a personal automobile, for each day a member is in attendance at a meeting of the authority or a committee meeting of the authority. Notwithstanding the foregoing, no member shall receive an expense allowance or transportation reimbursement if said member is entitled to receive an expense allowance, transportation reimbursement, or per diem allowance for performance of duties as a member of the Board of Community Affairs for work performed on that day.

(g) Except for the authorization of the issuance of bonds, the authority may delegate to the executive director such powers and duties as it may deem proper.

(h) The commissioner of community affairs shall be the executive director of the authority. The executive director shall appoint such direc-

tors, deputies, and assistants as may be necessary to manage the operations of the authority and may organize the authority into such divisions, sections, or offices as may be deemed necessary or convenient.

(i) No part of the funds of the authority shall inure to the benefit of or be distributed to its members or officers or other private persons, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred. In addition, the authority shall be authorized and empowered to make loans and grants, allocate credits, provide financial assistance, and otherwise exercise its other powers in furtherance of its corporate purposes. No such loans or grants or financial assistance shall be made to, no credits shall be allocated to, and no property shall be purchased or leased from or sold, leased, or otherwise disposed of to any member or officer of the authority in his or her individual capacity or by virtue of partnership or ownership of a for profit corporation. This subsection does not preclude loans or grants to, or financial assistance or allocation of credit to, or purchase or lease from or sale, lease, or disposal of property to any subsidiary corporation of the authority.

(j) The Attorney General shall provide legal services for the authority, and, in connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable. (Code 1981, § 50-26-5, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1996, p. 872, § 9.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, “community

affairs” was substituted for “the Department of Community Affairs” in subsection (h).

JUDICIAL DECISIONS

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1975, pp. 1651, 1655, which were subsequently repealed but were succeeded by provisions in this Code section, are included in the annotations for this Code section.

Adoption of standard metropolitan statistical areas lawful delegation of power. — By adopting the standard metropolitan statistical areas (SMSA) of the state to determine representation, the General Assembly has not illegally delegated its legislative power to

the United States Department of Commerce Office of Management and Budget, which defines SMSA’s. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1975, pp. 1651, 1655).

Public members are proper members of the Georgia Residential Finance Authority, and any and all actions taken by them as members of that body are valid and enforceable. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1975, pp. 1651, 1655).

OPINIONS OF THE ATTORNEY GENERAL

Editor’s notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, p. 1975, which was subsequently repealed but was succeeded by provisions in

this Code section, are included in the annotations for this Code section.

Appointment of commissioner of other department as director. — Board of Direc-

tors of the Georgia Residential Finance Authority may not appoint an individual who serves as the commissioner of community affairs as the executive director of the authority while the individual is still an ex-officio member of that board. However, there is no legal prohibition against appoint-

ment after the commissioner resigns the position as commissioner and after a successor has been appointed and qualified since the membership on the Authority's Board of Directors will cease. 1980 Op. Att'y Gen. No. 80-13 (decided under Ga. L. 1974, p. 1975).

50-26-6. Limitation on liability.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, is subject to any liability resulting from:

- (1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority; or
- (2) Carrying out any of the powers given in this chapter. (Code 1981, § 50-26-6, enacted by Ga. L. 1991, p. 1653, § 1-2.)

OPINIONS OF THE ATTORNEY GENERAL

Board members protected from liability.
— Within certain parameters and with diligent, good faith supervision of the enterprise, a member of the board of directors acting within the scope of his or her author-

ity in carrying out the authority's stated powers may rely upon O.C.G.A. § 50-26-6 for protection from imposition of personal liability. 1995 Op. Att'y Gen. No. 95-40.

50-26-7. Powers of authority vested in board of directors; quorum; action taken by majority.

(a) The powers of the authority shall be vested in the members of the board of directors in office from time to time; and a majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority.

(b) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(c) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all duties of the board. (Code 1981, § 50-26-7, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-8. Powers of authority.

(a) The authority shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a corporate seal;

(3) To adopt, amend, and repeal bylaws, rules and regulations, and policies and procedures for the regulation of its affairs and the conduct of its business, the election and duties of officers and employees of the authority, and such other matters as the authority may determine;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel, financial advisers, consultants, fiscal agents, trustees, and accountants and to fix their compensation and pay their expenses, including the power to contract with the Department of Community Affairs for professional, technical, clerical, and administrative support as may be required;

(5) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(6) To borrow money and to issue notes and bonds and other obligations to accomplish its public purposes and to provide for the rights of the lenders or holders thereof;

(7) To pledge, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority, including, but not limited to, real property, fixtures, personal property, intangible property, revenues, income, charges, fees, or other funds and to execute any lease, trust indenture, trust agreement, resolution, agreement for the sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such bonds, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument; the state, on behalf of itself and each political subdivision, public body corporate and politic, or taxing district therein, waives any right it or such political subdivision, public body corporate and politic, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(8) To purchase notes or participations in notes evidencing loans which are secured by mortgages or security interests and to enter into contracts in that regard;

(9) To extend credit, to make loans, to participate in the making of loans, to enter into commitments for the purchase of mortgages or

participations, to acquire and contract to acquire mortgages or participations, to provide credit enhancement, and to provide or procure insurance;

(10) To collect fees and charges in connection with its bonds, loans, commitments, insurance, credit enhancement, and servicing, including, but not limited to, reimbursement of costs of financing;

(11) To sell loans, mortgages, security interests, and other obligations of the authority at public or private sale; to negotiate modifications or alterations in loans, mortgages, security interests, and other obligations of the authority; to foreclose on any mortgage or security interest in default or commence any action to protect or enforce any right conferred upon it by any law, mortgage, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such loan, mortgage, security interest, or other obligation of the authority at any foreclosure or at any other sale; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the authority or mortgage holders or holders of the authority's notes, bonds, or other obligations;

(12) To service mortgages and to make and execute contracts for the servicing of mortgages made or acquired by the authority and to pay reasonable compensation for such servicing;

(13) To procure or to make and execute contracts, agreements, and other instruments, including interest rate swap or currency swap agreements, letters of credit, or other credit facilities or agreements, and to take such other actions and do such other things as the authority may deem appropriate to secure the payment of any loan, lease, or purchase payment owed to the authority or any bonds or other obligations issued by the authority, including the power to pay the cost of obtaining any such contracts, agreements, and other instruments;

(14) To receive and use the proceeds of any tax levied by the state or a local government or taxing district of the state enacted for the purposes of providing credit enhancement or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(15) To receive and administer gifts, grants, and devises of money and property of any kind and to administer trusts;

(16) To acquire real and personal property in its own name to promote any of the public purposes of the authority or for the administration and operation of the authority;

(17) To provide and administer grant moneys for any of the public purposes of the authority and to comply with all conditions attached thereto;

(18) To contract for any period, not exceeding 50 years, with the state, any institution, department, agency, or authority of the state, or any local government within the state for the use by the authority of any facilities or services of any such entity or for the use by any such entity of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such entity with which the authority contracts are authorized by law to undertake;

(19) To invest any accumulation of its funds, including, but without limiting the generality of the foregoing, funds received from the issuance of bonds and any sinking funds or reserves in any manner as it determines is in its best interests and to purchase its own bonds and notes;

(20) To hold title to any project financed by it, but it shall not be required to do so;

(21) To establish eligibility standards for financing and financial assistance and technical assistance authorized for projects under this chapter;

(22) To sell or otherwise dispose of unneeded or obsolete equipment or property of every nature and every kind;

(23) To lease as lessor any facility or any project for such rentals and upon such terms and conditions as the authority considers advisable and not in conflict with this chapter;

(24) To sell by installment or otherwise to sell by option or contract for sale and to convey all or any part of any item of any project or facility for such price and upon such terms and conditions as the authority considers advisable and which are not in conflict with this chapter;

(25) To manage property, intangible, real, and personal, owned by the authority or under its control by lease or by other means;

(26) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the authority or the Constitution and laws of this state, including:

(A) The power to retain accounting and other financial services;

(B) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(C) The power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and

(D) The power to act as self-insurer with respect to any loss or liability and to create insurance reserves;

(27) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation, a public body, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. The members of the board of directors of the authority shall constitute the members of and shall serve as directors of any subsidiary corporation and such shall not constitute a conflict of interest. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(28) To lease any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state; and no such lease agreement shall be deemed to be a contract subject to any law requiring that contracts shall be let only after receipt of competitive bids;

(29) To provide advisory, technical, consultative, training, management, educational, and project assistance services to the state and any institution, department, agency, or authority of the state, to any local government, or to any nonprofit or for profit business, corporation, partnership, association, sole proprietorship, or other entity or enterprise and to enter into contracts with the foregoing to provide such services; and the state, any institution, department, agency, or authority of the state, and any local government are authorized to enter into contracts with the authority for such services, to perform all duties required by the contract, and to pay for such services as may be provided them;

(30) To impose restrictive covenants which shall be deemed to be running with the land to any person, corporation, partnership, or other form of business entity which receives financial assistance from the authority, which form of financial assistance shall include tax credits, bond financing, grants, guarantees of the authority, guarantees of the state, insurance of the authority, and all other forms of financial assistance, regardless of whether the authority enjoys privity of estate or whether the covenant touches and concerns the property burdened; and such restrictive covenants shall be valid for a period of up to the later of

40 years or the termination or satisfaction of such financial assistance, notwithstanding any other provision of law;

(31) To enter into partnership agreements, to sell and purchase partnership interests, and to serve as general or limited partner of a partnership created to further the public purposes of the authority;

(32) To allocate and issue low-income housing credits under Section 42 of the Internal Revenue Code of 1986, as amended, and to take all other actions and impose all other conditions which are required by federal law or which in the opinion of the authority are necessary or convenient to ensure the complete, effective, efficient, and lawful allocation of and utilization of the low-income housing credit program. Such conditions may include barring applicants from participation in the tax credit program due to abuses of the tax credit program and imposing more stringent conditions for receipt of the credit than are required by Section 42 of the Internal Revenue Code. The authority may establish rounds for the competitive allocation of low-income credits and such applications shall not be available for public inspection until the time period for submission of applications for that competitive round has expired;

(33) To allocate and issue any federal or state tax credits for which the authority is designated as the state allocating agency;

(34) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

(35) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(36) To finance or facilitate in any manner the provision of health care services in the state, directly or indirectly and through one or more intermediaries, including, without limitation, the state; any institution, department, agency, fund, or authority of the state or created under state law; any political subdivision of the state; or any other public or private business, enterprise, agency, corporation, or authority, or any other entity; provided, however, that the authority shall not be authorized to directly provide health care services to patients; and

(37) The authority shall have the power to contract with the Department of Community Affairs for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the authority in exercising the power and management of the authority; provided, however, such contracts shall not delegate the authorization of the issuance of any bonds or other indebtedness of the authority. No part of the funds or assets of the authority shall be distributed to the Department of Community Affairs or any other department, authority, or

agency of the state unless otherwise provided by law, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred and except as may be deemed necessary or desirable by the authority to fulfill the purposes of the authority as set forth in this chapter. Nothing in this paragraph shall be construed as precluding the provision by the Department of Community Affairs or any other department, authority, or agency of the state and the authority of joint or complementary services or programs within the scope of their respective powers.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter and no such power limits or restricts any other power of the authority.

(c) This chapter, being for the welfare of this state and being for the welfare of its citizens, shall be liberally construed to effect the purposes specified in this chapter.

(d) No portion of the state ceiling, as defined in Code Section 36-82-182, shall be set aside or reserved, and no separate pool or share shall be created within the state ceiling, for the purpose of reserving for or allocating to the authority a portion of the state ceiling for use by the authority in the financing of, or the provision of financial assistance for, any enterprise. The distribution to the authority by the Department of Community Affairs of any portion of the state ceiling for the purpose of permitting the financing of any enterprise shall be accomplished based upon the merits of each enterprise and shall be accomplished upon the same terms and conditions, without preference or priority of any kind, as shall be applicable to the distribution of any portion of the state ceiling for the benefit of any enterprise proposed to be financed by a local authority.

(e) No personal financial information submitted to the authority in connection with any of its programs shall be subject to public disclosure. (Code 1981, § 50-26-8, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 9-13; Ga. L. 1996, p. 872, §§ 10, 11.)

U.S. Code. — Section 42 of the Internal Revenue Code, referred to in paragraph (a)(32) of this Code section, is codified at 26 U.S.C. § 42.

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1974, pp. 975, 983, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Effect of section. — Ga. L. 1974, pp. 975, 983 amply establishes the power of the authority to make rules and regulations. *Rich v. State*, 237 Ga. 291, 227 S.E.2d 761 (1976) (decided under Ga. L. 1974, pp. 975, 983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1974, p. 975, which was subsequently repealed but was succeeded by provisions of this Code section, are included in the annotations for this Code section.

Rental agreements for office space. — Georgia Residential Finance Authority may seek, but is not required to seek, assistance and approval of Department of Administrative Services, Division of Property and Space Management, regarding rental agreements for the authority's office space. 1982 Op. Att'y Gen. No. 82-24 (decided under Ga. L. 1974, p. 975).

Mandatory federal waiting period for former board of directors seeking financial participation. — Federal HOME Regulations, 24 C.F.R. § 92.356(b)(1993), prohibit a former member of the board of directors of the Georgia Housing and Finance Author-

ity from participating in or benefiting from financial programs of the authority for a period of one year and further prohibit such participation in HOME programs of other participating jurisdictions. 1994 Op. Att'y Gen. No. 94-12.

Real property acquisitions for multifamily affordable housing. — Real property acquisitions from the Resolution Trust Corporation for multifamily affordable housing constitute a permissible project within the powers of the Georgia Housing and Finance Authority. 1994 Op. Att'y Gen. No. 94-19.

Limitation on power of Georgia Housing and Finance Authority. — Georgia Housing and Finance Authority does not have statutory power to provide marketing, fund management, and underwriting services to a private, nonprofit lending entity. 1995 Op. Att'y Gen. No. 95-24.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 533, 534.

C.J.S. — 64 C.J.S., Municipal Corpora-

tions, §§ 557 et seq., 1541, 1542, 1571. 64A C.J.S., Municipal Corporations, §§ 1573 et seq., 1609.

50-26-9. Power to issue bonds and incur indebtedness; exemption from taxation.

(a) The authority may issue bonds for the purpose of facilitating economic development; for the improvement of public health, safety, and welfare; and for other public purposes through the provision of financing and financial assistance for projects, including, without limitation, health care services, either directly or indirectly through a financial institution; a lender; the state; any institution, department, agency, fund, or authority of the state or created under any state law; any political subdivision of the state; or any other public agency, public or private business, enterprise, agency, corporation, authority, or any other entity.

(b) The authority shall have the power to borrow money and to issue bonds, regardless of whether the interest payable by the authority incident to such loans or bonds or income derived by the holders of the evidence of such indebtedness or bonds is, for purposes of federal taxation, includable in the taxable income of the recipients of such payments or is otherwise not exempt from the imposition of such taxation on the recipient.

(c) No bonds, notes, or other obligations of, and no indebtedness incurred by, the authority shall constitute an indebtedness or obligation or

a pledge of the faith and credit of the State of Georgia or its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, that the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

(d) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential government function in the exercise of the powers conferred upon it by this chapter. The state covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by the authority or under the jurisdiction, control, possession, or supervision of the authority or upon the activities of the authority in the financing of the activities financed by the authority or upon any principal, interest, premium, fees, charges, or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation is declared to specifically extend to any subsidiary corporation created by the board of directors of the authority but shall not extend to tenants or lessees of the authority unless otherwise exempt from taxation. The exemption from taxation shall include exemptions from sales and use taxes on property purchased by the authority or for use by the authority.

(e) The state does pledge to and agree with the holders of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders. (Code 1981, § 50-26-9, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 14; Ga. L. 1996, p. 872, § 12.)

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1975, pp. 975, 983, which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Debt not state obligation or pledge of credit. — Debt of an authority or agency of the state does not obligate the state or pledge the credit of the state as is required to be made explicit by the authority on the face of the bonds the authority issues. Rich v.

State, 237 Ga. 291, 227 S.E.2d 761 (1976)
(decided under Ga. L. 1974, pp. 975, 983).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1981, pp. 184, 1036 and former O.C.G.A. § 8-3-180 et seq., which were subsequently repealed but were succeeded by provisions of this Code section, are included in the annotations for this Code section.

Transfer of funds to family farm fund. — Authority could transfer funds from general fund to family farm fund through April 30,

1981, only. 1981 Op. Att'y Gen. No. 81-30 (decided under Ga. L. 1981, pp. 184, 1036).

Authority may issue bonds which are subject to federal taxation, but the authority has no power under either Part One or Part Two of its enabling legislation (Ga. L. 1974, p. 975 and Ga. L. 1983, p. 1228) to issue bonds which are subject to state taxation. 1988 Op. Att'y Gen. No. 88-17 (decided under former O.C.G.A. § 8-3-180 et seq.).

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 516, 605. 64 Am. Jur. 2d, Public Securities and Obligations, §§ 11 et seq., 50, 55, 75 et seq.

C.J.S. — 64A C.J.S., Municipal Corporations, §§ 1585, 1645, 1647, 1649 et seq.

50-26-10. Obligations not subject to “Georgia Uniform Securities Act of 2008”; payment of operating costs; authority’s revenue; bond anticipation notes; terms of bond; replacement of bond; validation; interest rates.

(a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, the “Georgia Uniform Securities Act of 2008.” No notice, proceeding, or publication except those required in this chapter is necessary to the performance of any act authorized in this chapter; nor is any such act subject to referendum.

(b) The authority shall fix such rates, fees, and charges for loans and for use of its services and facilities as is sufficient in the aggregate (when added to any other grants or funds available to the authority) to provide funds for the payment of the interest on and principal of all bonds payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the authority in connection with the exercise of its powers under this chapter and for the payment of all operating costs and expenses which shall be incurred by the authority, including provisions for appropriate reserves, except for funds appropriated to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund with respect to any bonds issued by the authority as guaranteed revenue debt; provided, however, that such costs and expenses shall include any reimbursement to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund because of any payments made from such fund for any guaranteed revenue debt issued by the authority.

(c) The use and disposition of the authority's revenue is subject to the provisions of the resolutions authorizing the issuance of any bonds payable therefrom or of the trust agreement or indenture, if any, securing the same. The authority may designate any of its bonds as general obligations or may limit the source of repayment pursuant to the resolution authorizing the issuance of the bonds.

(d) The making of any loan commitment or loan, and the issuance, in anticipation of the collection of the revenues from such loan or loans, of bonds to provide funds therefor, may be authorized under this chapter by resolution of the authority. Unless otherwise provided therein, such resolution shall take effect immediately and need not be published or posted. The authority, in determining the amount of such bonds, may include all costs and estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all costs of the project. Such bonds may also be issued to pay off, refund, or refinance any outstanding bonds or other obligations of any nature, whether or not such bonds or other obligations are then subject to redemption; and the authority may provide for such arrangements as it may determine for the payment and security of the bonds being issued or for the payment and security of the bonds or other obligations to be paid off, refunded, or refinanced.

(e) Bonds may be issued under this chapter in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered or book entry; may be issued in such specific amounts; may carry such registration, conversion, and exchangeability privileges; may be declared or become due before the maturity date thereof; may provide such call or redemption privileges; may have such rank or priority; may be the subject of a put or agreement to repurchase by the authority or others; may be resold by the authority, once acquired, without the acquisition being considered the extinguishment of the bonds; may be issued for a project or for more than one project, whether or not such project is identified at the time of bond issuance; and may contain such other terms, covenants, assignments, and conditions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide. The authority may sell such bonds in such manner, at such price or prices, and on such terms and conditions as the authority determines.

(f) The bonds must be signed by the chair or vice chair of the authority; the corporate seal of the authority must be impressed, imprinted, or otherwise reproduced on the bonds; and the bonds must be attested by the signature of the secretary or assistant secretary of the authority. The signatures of the officers of the authority and the seal of the authority on

any bond issued by the authority may be facsimile if the instrument is authenticated or countersigned by a trustee other than the authority itself or an officer or employee of the authority. All bonds issued under authority of this chapter bearing signatures or facsimiles of signatures of officers of the authority in office on the date of the signing thereof are valid and binding, notwithstanding that before the delivery thereof and payment therefor such officers whose signatures appear thereon have ceased to be officers of the authority. Pending the preparation of the definitive bonds, interim certificates, in such form and with such provisions as the authority may determine, may be issued to the purchasers of bonds to be issued under this chapter.

(g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement entered into pursuant to this chapter are a contract with every holder of the bonds; and the duties of the authority under this chapter and under any such bond resolution, indenture, or trust agreement are enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(h) The authority may provide for the replacement of any bond which becomes mutilated, lost, or destroyed in the manner provided by the resolution, indenture, or trust agreement.

(i)(1) The authority shall not have outstanding at any one time bonds and notes for its single-family residential housing program in an aggregate amount exceeding \$1.3 billion, excluding bonds and notes issued to refund outstanding bonds and notes.

(2) The authority shall not have outstanding at any one time bonds and notes for financing of enterprises, other than enterprises contained in a health facility and other than housing, exceeding \$140 million and shall not issue any such bonds or notes after June 30, 1995; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refund outstanding bonds and notes.

(3) The authority shall not have outstanding at any one time bonds and notes for the financing of health care services exceeding \$30 million; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refinance outstanding bonds and notes.

(4) Any limitations with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law," the usury laws of this state, or any other laws of this state do not apply to bonds of the authority.

(j) All bonds issued by the authority under this chapter shall be issued and shall be validated by the Superior Court of Fulton County, Georgia, under and in accordance with the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a portion of the "Revenue Bond

Law,” as now or hereafter in effect, except as provided in this chapter. Notes and other obligations of the authority may be, but are not required to be, so validated.

(k) All bonds must bear a certificate of validation signed by the clerk of the Superior Court of Fulton County, Georgia. Such signature may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry is original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(l) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be as follows for each bond, regardless of the denomination of such bond: \$1.00 for each bond for the first 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

(m) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General; the notice to the public of the time, place, and date of the validation hearing; and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and the petition and complaint or may state that, if the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(n) Prior to issuance, all bonds shall be subject to the approval of the Georgia State Financing and Investment Commission.

(o) Any other law to the contrary notwithstanding, this chapter shall govern all civil claims, proceedings, and actions respecting debt of the authority evidenced by bonds. (Code 1981, § 50-26-10, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, §§ 15, 16; Ga. L. 2008, p. 381, § 10/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted “‘Georgia Uniform Securities Act of 2008’” for “‘Georgia Securities

Act of 1973’” at the end of the first sentence in subsection (a).

OPINIONS OF THE ATTORNEY GENERAL

Power of authority to continue loans pursuant to federal program. — Authority's power to continue to make loans pursuant to the United States Department of Agriculture's Farmers Home Administration Inter-

mediary Relending Program until reaching the monetary limit of the existing promissory note is not affected by the "sunset" provision of O.C.G.A. § 50-26-10(i)(2). 1995 Op. Att'y Gen. No. 95-30.

50-26-11. Bonds as securities.

The bonds authorized by this chapter are securities in which:

- (1) All public officers and bodies of this state;
- (2) All local governments of this state;
- (3) All insurance companies and associations and other persons carrying on an insurance business;
- (4) All banks, bankers, trust companies, saving banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business;
- (5) All administrators, guardians, executors, trustees, and other fiduciaries; and
- (6) All other persons whomsoever who are authorized to invest in bonds or other obligations of this state

may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are also securities which may be deposited with and shall be received by all public officers and bodies of this state and local governments for any purpose for which deposit of the bonds or other obligations of this state is authorized. (Code 1981, § 50-26-11, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-12. Payment of bond proceeds; pledges of proceeds for payment of bond.

(a) All or any part of the gross or net revenues and earnings derived from any particular loan or loans and any and all revenues and earnings received by the authority, regardless of whether such revenues and earnings were produced by a particular loan or loans for which bonds have been issued, may be pledged by the authority to the payment of the principal of and interest on bonds of the authority as may be provided in any resolution authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to such bonds.

(b) Such funds so pledged, from whatever source received, may include funds received from one or more of all sources and may be set aside at

regular intervals into sinking funds for which provision may be made in any such resolution or indenture or trust agreement, which sinking funds may be pledged to and charged with the payment of:

- (1) The interest on such bonds as such interest becomes due;
- (2) The principal of the bonds as the same mature;
- (3) The necessary charges of any trustee, paying agent, or registrar for such bonds;
- (4) Any premium on bonds retired on call or purchase; and
- (5) Reimbursement of a credit enhancement provider who has paid principal of or premium or interest on any bond.

(c) The use and disposition of any sinking fund may be subject to regulations for which provision may be made in the resolution authorizing the issuance of the bonds or in the trust instrument or indenture securing the payment of the same. (Code 1981, § 50-26-12, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-13. Power to secure issuance of bonds by trust agreement or indenture; contents of trust agreement or indenture.

(a) Any issue of bonds may be secured by a trust agreement or indenture made by the authority with a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside this state. Such trust agreement or indenture may pledge or assign all revenue, receipts, and earnings to be received by the authority from any source and any proceeds which may derive from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon.

(b) The resolution providing for the issuance of bonds and such trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver on default in the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rates, fees, and charges pertaining to any loan, any overdue principal and interest on any loan, any overdue principal of and interest on all bonds in the issue, all costs of collection, and all other costs reasonably necessary to accomplish the collection of such sums in the event of any default of the authority.

(c) Such resolution, trust agreement, or indenture may include covenants setting forth the duties to the authority regarding the custody, safeguarding, and application of all funds of the authority, including any proceeds derived from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon. In addition, such resolution, trust agreement, or indenture may include covenants providing

for the operation, maintenance, repair, and insurance of any facility or capital improvements constructed or acquired with loan proceeds.

(d) All expenses incurred in carrying out any trust agreement or indenture under this Code section may be treated as a part of the cost of financing and administering the loans that will be funded or acquired with the proceeds of the bonds governed by such trust agreement or indenture. (Code 1981, § 50-26-13, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-14. Moneys received deemed trust funds; pledge of assets, funds, and properties for payment of bonds.

(a) All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or other obligations, as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority shall, in the resolution providing for the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the earnings and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority is valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge is valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded. (Code 1981, § 50-26-14, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-15. Annual and periodic audits and reports required.

(a) The state auditor shall make an annual audit of the books, accounts, and records of the authority with respect to its receipts, disbursements, contracts, mortgages, leases, assignments, loans, and all other matters relating to its financial operations. The state auditor shall place the audit report on file in his or her office, make the report available for inspection by the general public, and shall submit a copy of the report to the General Assembly. The state auditor shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which he or she deems to be most effective and efficient.

(b) In addition to the annual audit report, the authority shall render to the state auditor every six months a report setting forth in detail a complete analysis of the activities, indebtedness, receipts, and financial affairs of the authority. (Code 1981, § 50-26-15, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 2005, p. 1036, § 49/SB 49.)

50-26-16. Termination of authority.

The authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment thereof. On termination of the existence of the authority, all its rights and properties shall pass to and be vested in the State of Georgia. (Code 1981, § 50-26-16, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-17. Powers as to real property; reverse equity mortgages; sale of qualified mortgage bonds; administration of alternate funds; authority to issue.

(a) The authority may directly acquire, manage, develop, and dispose of real property and improvements thereon as it deems necessary or desirable to provide adequate housing within the state.

(b) The authority may issue bonds for reverse equity mortgages to enable the elderly to maintain a decent and appropriate residence while providing necessary cash for living expenses.

(c) With respect to the sale of new qualified mortgage bonds, at the time of original issuance of such bonds, at least one-third of the total proceeds available for mortgage loans shall be set aside to finance housing units in the metropolitan statistical areas of this state and at least one-third of the total proceeds available for mortgage loans shall be set aside to finance housing units outside of the metropolitan statistical areas of this state. The time period for the geographic set aside shall be four months from the date of issuance of the bonds. For the purpose of this geographic distribution requirement, no county with a population of less than 50,000 shall be considered as being within a metropolitan statistical area of this state. No geographic distribution requirement shall apply to multifamily housing units financed by the authority. No geographic distribution requirement shall apply to refunding bonds or recycled proceeds or to qualified mortgage bonds issued to spur economic and housing development in a discrete geographic area.

(d) The authority may receive and administer any and all federal funds, state funds, or funds, grants, or gifts from other sources which are intended to promote the availability or affordability of housing and housing finance within the state.

(e) The authority is the sole and exclusive issuer of mortgage credit certificates in and for the state, notwithstanding any contrary provision of law; provided, however, that any urban residential finance authority is permitted to issue mortgage credit certificates but only if the urban residential finance authority adopts purchase price and income limits consistent with those adopted by the Georgia Housing and Finance Authority for the mortgage credit certificate program.

(f) Code Section 44-14-5 shall not be applicable to mortgage loans purchased, made, or otherwise financed by the authority. (Code 1981, § 50-26-17, enacted by Ga. L. 1991, p. 1653, § 1-2.)

50-26-18. Facilitating economic development for enterprises.

Without limiting the generality of the findings and intent of the General Assembly or any provision of this chapter, the authority shall facilitate economic development for enterprises throughout the state by means that shall include, without limitation, the issuance of bonds, with or without such credit enhancement as the authority may deem appropriate; the collection of and accumulation of fees and other revenues; the establishment of debt service reserves and sinking funds; and the use of the proceeds from such bonds, funds, and reserves to make loans to enterprises, either directly to such enterprises or indirectly through a financial institution, a political subdivision, or otherwise; to acquire loans made by others to such enterprises; to establish revolving or other funds from which short-term or long-term loans can be made to such businesses; to guarantee the payment of loans or other obligations of such enterprises; and to do all things deemed by the authority to be necessary, convenient, and desirable for and incident to the efficient and proper development and operation of such types of undertakings. (Code 1981, § 50-26-18, enacted by Ga. L. 1991, p. 1653, § 1-2; Ga. L. 1993, p. 738, § 17.)

OPINIONS OF THE ATTORNEY GENERAL

<p>Forgiveness of loans made by the Georgia Housing and Finance Authority under the Economic Development Incentive Loan Pro-</p>	<p>gram violates state law. 1995 Op. Att'y Gen. No. 95-22.</p>
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50-26-19. Financing acquisition, construction, and equipping of health care facilities.

(a) The authority may initiate a program of financing the acquisition, construction, and equipping of health care facilities in the state. In furtherance of this objective, the authority may also:

(1) Establish eligibility standards for participating providers, provided that such standards shall encourage maximum feasible participation for

participating providers serving disproportionately high numbers of indigent patients;

(2) Contract with any entity securing the payment of bonds to authorize the entity to approve the participating providers that can finance or refinance a project with proceeds from the bond issue secured by that entity;

(3) Lease to a participating provider specific projects upon terms and conditions that the authority considers proper, charge and collect rents therefor, terminate any such lease upon the failure of the lessee to comply with any of its obligations under the lease or otherwise as the lease provides, and include in any such lease provisions that the lessee has the option to renew the term of the lease for such periods and at such rents as may be determined by the authority or to purchase any or all of the projects to which the lease applies;

(4) Loan to a participating provider under any installment purchase contract or loan agreement money to finance, reimburse, or refinance the cost of specific projects and take back a secured or unsecured promissory note evidencing such a loan and security interest in the project financed or refinanced with such loan upon such terms and conditions as the authority considers proper;

(5) Sell or otherwise dispose of any unneeded or obsolete projects under terms and conditions as determined by the authority;

(6) Maintain, repair, replace, and otherwise improve or cause to be maintained, repaired, replaced, and otherwise improved a project owned by the authority;

(7) Obtain or aid in obtaining property insurance on all projects owned or financed by the authority or accept payment if a project is damaged or destroyed; and

(8) Enter into any agreement, contract, or other instrument with respect to any insurance, guarantee, letter of credit, or other form of credit enhancement, accepting payment in such manner and form as provided therein if a participating provider defaults and assign any such insurance, guarantee, letter of credit, or other form of credit enhancement as security for bonds issued by the authority.

(b) Before exercising any of the powers conferred by subsection (a) of this Code section, the authority may:

(1) Require that the lease, installment purchase contract, or loan agreement involved be insured by a loan insurer, guaranteed by a loan guarantor, or secured by a letter of credit or other form of credit enhancement; and

(2) Require any other type of security from the participating providers that it considers reasonable and necessary.

(c) The authority may not finance a project for any participating provider unless the Department of Community Health, or any successor thereof, has issued a certificate of need or comparable certification of approval to the participating provider for the project to be financed by the authority if the acquisition of such project by the participating provider would require a certificate of need or comparable certification of approval under Chapter 6 of Title 31. (Code 1981, § 50-26-19, enacted by Ga. L. 1993, p. 738, § 18; Ga. L. 1999, p. 296, § 22.)

50-26-20. Competitive bidding on contracts not required.

A project financed under this chapter is not subject to any statutory requirement of competitive bidding or other restriction imposed on the procedure for award of contracts or the lease, sale, or other disposition of property with regard to any action taken under authority of this chapter. (Code 1981, § 50-26-20, enacted by Ga. L. 1993, p. 738, § 18.)

50-26-21. Transfer of assets and obligations of Hospital Financing Authority to authority.

The authority shall receive all assets of and the authority shall be responsible for any contracts, leases, agreements, or other obligations of the Hospital Financing Authority created by Article 10 of Chapter 7 of Title 31. The authority is substituted as a party to any such contract, agreement, lease, or other obligation and is responsible for performance thereon as if it had been the original party and is entitled to all benefits and rights of enforcement by any other parties to such contracts, agreements, leases, or other obligations. (Code 1981, § 50-26-21, enacted by Ga. L. 1993, p. 738, § 18.)

50-26-22. Transfer of personnel to Department of Community Affairs.

Effective July 1, 1996, without diminishing the powers of the authority pursuant to Code Section 50-26-8, all personnel positions authorized by the authority in fiscal year 1996 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 1996, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service of the State Personnel Administration as defined by Code Section 45-20-6. (Code 1981, § 50-26-22, enacted by Ga. L. 1996, p. 872, § 13; Ga. L. 1997, p. 143, § 50; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted "State Personnel Administration" for "state merit system" near the end of the last sentence of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "and" was inserted following "Affairs" near the end of this Code section.

CHAPTER 27

LOTTERY FOR EDUCATION

Article 1		Sec.	
General Provisions			
Sec.		50-27-19.	able or assignable; restriction on contracts and sales.
50-27-1.	Short title.		
50-27-2.	Legislative findings and declarations.	50-27-20.	Fidelity fund for retailers; assessments.
50-27-3.	Definitions.		
50-27-4.	Georgia Lottery Corporation created; venue.	50-27-21.	Cancellation, suspension, revocation, or termination of retail contracts.
50-27-5.	Membership of board of directors; appointment; terms; filling of vacancies; conflict of interests; reimbursement for expenses; officers; quorum.	50-27-22.	Preservation of lottery proceeds by retailers; accounting procedures; preference accorded proceeds of insolvent retailers.
50-27-6.	Lottery Retailer Advisory Board.	50-27-23.	Computation of rental payments of retailers.
50-27-7.	General duties of board of directors.	50-27-24.	Restrictions on sale of tickets or shares; price; gifts and promotions.
50-27-8.	Appointment of chief executive officer; compensation.		
50-27-9.	General powers of corporation.		
50-27-10.	Adoption by board of procedures regulating conduct of lottery games.	50-27-24.1.	Prize proceeds subject to state income tax; attachments, garnishments, or executions; validation of winning tickets; prohibited purchases; money-dispensing machines; unclaimed prize money.
50-27-11.	Duties of chief executive officer.	50-27-25.	Payment of prize to person other than winner; assignment of prize rights; hearing; findings justifying approval of voluntary assignment; other requirements.
50-27-12.	Employees; compensation; restrictions; background investigations; bonding.	50-27-26.	Confidentiality of information; investigations; supervision and inspections; reports of suspected violations; assistance in investigation of violations.
50-27-13.	Disposition of lottery proceeds; budget report by Governor; appropriations by General Assembly; shortfall reserve subaccount.	50-27-27.	Sales to minors; penalty; affirmative defense.
50-27-14.	Participation by minority businesses.	50-27-28.	Penalty for falsely making, altering, forging, uttering, passing, or counterfeiting ticket; penalty for attempting to influence winning of prize.
50-27-15.	Investigation of vendors; disclosure requirements; restrictions on entry into procurement contracts.	50-27-29.	Penalty for making false statements or false entries in books or records.
50-27-16.	Bonding requirements for vendors; qualifications of vendors; competitive bid requirement.		
50-27-17.	State-wide network of retailers; commissions; certificate of authority; qualifications of retailers; fees for outlets; review of activities; gifts or gratuities.		
50-27-18.	Retailer contracts not transfer-		Agreements with agencies of other jurisdictions; restriction on release of records, documents, and information.

Sec.		Sec.	
50-27-30.	Bidding requirements and procedures for contracts.	50-27-51.	Definitions.
50-27-31.	Appeals from actions of board.	50-27-52.	Collection remedy in addition to other remedies.
50-27-32.	Corporation authorized to borrow money; validation of debt; restriction on use of money in state general fund; purchase or release of goods and services.	50-27-53.	Debts owed to state agencies lien against lottery winnings; prizes paid out by retailers or noncorporate entities; time period involved; rules and regulations; immunity; costs.
50-27-33.	Reports by corporation; audits; budget; fiscal year.	50-27-54.	Information provided to claimant agency; confidentiality.
50-27-34.	Legislative oversight committee.	50-27-55.	Article applicable to prizes of \$5,000.00 or more.
Article 2			
Setoff of Debt Collection Against Lottery Prizes			
50-27-50.	Purpose.		

OPINIONS OF THE ATTORNEY GENERAL

Use of funds for home school students. — Georgia Lottery for Education Act, O.C.G.A. Ch. 27, T. 50, does not prohibit the use of lottery funds for scholarships for home school students; however, the HOPE scholarship program rules and regulations exclude such students from eligibility. 1996 Op. Att’y Gen. No. U96-19.

ARTICLE 1

GENERAL PROVISIONS

Editor’s notes. — Ga. L. 1993, p. 1037, effective April 13, 1993, designated Code Sections 50-27-1 through 50-27-34 as Article 1 of this chapter.

Ga. L. 1998, p. 1686, § 1 offered a proposal to Article 1, Section II, Paragraph VIII of the Georgia Constitution which was ratified at the 1998 November general election

and which appropriated lottery proceeds for educational programs and purposes.

Administrative rules and regulations. — Grant programs, Official Compilation of the Rules and Regulations of the State of Georgia, Office of School Readiness, Chapter 591-2-1.

50-27-1. Short title.

This chapter shall be known and may be cited as the “Georgia Lottery for Education Act.” (Code 1981, § 50-27-1, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-2. Legislative findings and declarations.

It is found and declared by the General Assembly:

(1) That net proceeds of lottery games conducted pursuant to this chapter shall be used to support improvements and enhancements for

educational purposes and programs and that such net proceeds shall be used to supplement, not supplant, existing resources for educational purposes and programs;

(2) That lottery games are an entrepreneurial enterprise and that the state shall create a public body, corporate and politic, known as the Georgia Lottery Corporation, with comprehensive and extensive powers as generally exercised by corporations engaged in entrepreneurial pursuits;

(3) That lottery games shall be operated and managed in a manner which provides continuing entertainment to the public, maximizes revenues, and ensures that the lottery is operated with integrity and dignity and free of political influence; and

(4) That the Georgia Lottery Corporation shall be accountable to the General Assembly and to the public through a system of audits and reports. (Code 1981, § 50-27-2, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-3. Definitions.

As used in this chapter, the term:

(1) “Administrative expenses” means operating expenses, excluding amounts set aside for prizes, regardless of whether such prizes are claimed and excluding amounts held as a fidelity fund pursuant to Code Section 50-27-19.

(2) “Assignee” means any person or third party other than the winner to whom any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments may be transferred or assigned pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(3) “Assignment” means the transfer of any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments to any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(4) “Assignor” means any person receiving installment payments seeking to assign or transfer any portion of a prize or any right of any person to a prize awarded to an assignee or any person or third party pursuant to an appropriate judicial order as provided in Code Section 50-27-24.1.

(5) “Board” means the board of directors of the Georgia Lottery Corporation.

(6) “Capital outlay projects” means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replace-

ment, or rehabilitation of land, interests in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, computers, software, laboratories, furniture, textbooks, and reference material or other property of any nature whatsoever used on, in, or in connection with educational facilities.

(7) "Casino gambling" means a location or business for the purpose of conducting illegal gambling activities, but excluding the sale and purchase of lottery tickets or shares as authorized by this chapter.

(8) "Chief executive officer" means the chief executive officer of the Georgia Lottery Corporation.

(9) "Corporation" means the Georgia Lottery Corporation.

(10) "Educational facilities" means land, structures, and buildings owned or operated by and through the board of regents, the State Board of Education, the Technical College System of Georgia, or by any city, county, or independent school system within this state; provided, however, that a public road or highway leading to an educational facility shall not be considered an educational facility.

(11) "Educational purposes and programs" means capital outlay projects for educational facilities; tuition grants, scholarships, or loans to citizens of this state to enable such citizens to attend colleges and universities located within this state, regardless of whether such colleges and universities are owned or operated by the board of regents or to attend institutions operated under the authority of the Technical College System of Georgia; costs of providing to teachers at accredited public institutions who teach levels K-12, personnel at public postsecondary technical institutes under the authority of the Technical College System of Georgia, and professors and instructors within the University System of Georgia the necessary training in the use and application of computers and advanced electronic instructional technology to implement interactive learning environments in the classroom and to access the state-wide distance learning network; costs associated with repairing and maintaining advanced electronic instructional technology; voluntary pre-kindergarten; and an education shortfall reserve.

(12) "Interested party" means any individual or entity that has notified the corporation of his or her interest in the prize or is a party to a civil matter adverse to the assignor, including actions for alimony and child support.

(13) "Lottery," "lotteries," "lottery game," or "lottery games" means any game of chance approved by the board and operated pursuant to this chapter, including, but not limited to, instant tickets, on-line games, and

games using mechanical or electronic devices but excluding pari-mutuel betting and casino gambling as defined in this Code section.

(14) “Major procurement contract” means any gaming product or service costing in excess of \$75,000.00, including, but not limited to, major advertising contracts, annuity contracts, prize payment agreements, consulting services, equipment, tickets, and other products and services unique to the Georgia lottery, but not including materials, supplies, equipment, and services common to the ordinary operations of a corporation.

(15) “Member” or “members” means a director or directors of the board of directors of the Georgia Lottery Corporation.

(16) “Member of a minority” means an individual who is a member of a race which comprises less than 50 percent of the total population of the state.

(17) “Minority business” means any business which is owned by:

(A) An individual who is a member of a minority who reports as his or her personal income for Georgia income tax purposes the income of such business;

(B) A partnership in which a majority of the ownership interest is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the income of the partnership; or

(C) A corporation organized under the laws of this state in which a majority of the common stock is owned by one or more members of a minority who report as their personal income for Georgia income tax purposes more than 50 percent of the distributed earnings of the corporation.

(18) “Net proceeds” means all revenue derived from the sale of lottery tickets or shares and all other moneys derived from the lottery less operating expenses.

(19) “Operating expenses” means all costs of doing business, including, but not limited to, prizes, commissions, and other compensation paid to retailers, advertising and marketing costs, personnel costs, capital costs, depreciation of property and equipment, funds for compulsive gambling education and treatment, amounts held in or paid from a fidelity fund pursuant to Code Section 50-27-19, and other operating costs.

(20) “Pari-mutuel betting” means a method or system of wagering on actual races involving horses or dogs at tracks which involves the distribution of winnings by pools. Such term shall not mean lottery games which may be predicated on a horse racing or dog racing scheme that

does not involve actual track events. Such term shall not mean traditional lottery games which may involve the distribution of winnings by pools.

(21) “Person” means any individual, corporation, partnership, unincorporated association, or other legal entity.

(22) “Retailer” means a person who sells lottery tickets or shares on behalf of the corporation pursuant to a contract.

(23) “Share” means any intangible evidence of participation in a lottery game.

(24) “Ticket” means any tangible evidence issued by the lottery to provide participation in a lottery game.

(25) “Vendor” means a person who provides or proposes to provide goods or services to the corporation pursuant to a major procurement contract, but does not include an employee of the corporation, a retailer, or a state agency or instrumentality thereof. Such term does not include any corporation whose shares are publicly traded and which is the parent company of the contracting party in a major procurement contract. (Code 1981, § 50-27-3, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1996, p. 1603, § 5; Ga. L. 2008, p. 335, § 10/SB 435; Ga. L. 2008, p. 370, § 1/HB 515.)

The 2008 amendments. — The first 2008 amendment, effective July 1, 2008, substituted “Technical College System of Georgia” for “Department of Technical and Adult Education” once in paragraph (10), and twice in paragraph (11). The second 2008 amendment, effective May 12, 2008, added paragraphs (2) through (4); redesignated

former paragraphs (2) through (8) as present paragraphs (5) through (11), respectively; added paragraph (12); redesignated former paragraphs (9) through (21) as present paragraphs (13) through (25), respectively; and, in subparagraph (17)(A), inserted “or her” near the middle.

JUDICIAL DECISIONS

“Casino gambling.” — Certain games involving the purchase of lottery tickets did not fall within the definition of improper “casino gambling”; therefore, the creation and operation of the games was a lawful exercise of the authority of the Georgia Lottery Corporation. *Jackson v. Georgia Lottery Corp.*, 228 Ga. App. 239, 491 S.E.2d 408 (1997).

“Retailer.” — Where Chapter 7 debtor

executed a retail lottery contract with the state as officer of a corporation that had not yet been formed, corporation was a retailer within the meaning of O.C.G.A. § 50-27-3(18) because the corporation adopted the contract after its incorporation. *Ga. Lottery Corp. v. Ingram (In re Ingram)*, Bankr. , 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

50-27-4. Georgia Lottery Corporation created; venue.

There is created a body corporate and politic to be known as the Georgia Lottery Corporation which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation. Venue for the

corporation shall be in Fulton County. (Code 1981, § 50-27-4, enacted by Ga. L. 1992, p. 3173, § 2.)

JUDICIAL DECISIONS

Georgia Lottery Corporation is not a state “agency” entitled to the defense of sovereign immunity under the facts and law of an action brought to have certain lottery games declared illegal and unconstitutional. *Jackson v. Georgia Lottery Corp.*, 228 Ga. App. 239, 491 S.E.2d 408 (1997).

50-27-5. Membership of board of directors; appointment; terms; filling of vacancies; conflict of interests; reimbursement for expenses; officers; quorum.

(a) The corporation shall be governed by a board of directors composed of seven members to be appointed by the Governor. Members shall be appointed with a view toward equitable geographic representation.

(b) Members shall be residents of the State of Georgia, shall be prominent persons in their businesses or professions, and shall not have been convicted of any felony offense. The Governor should consider appointing to the board an attorney, an accountant, and a person having expertise in marketing.

(c) Members shall serve terms of five years, except that of the initial members appointed, three shall be appointed for initial terms of two years, two shall be appointed for initial terms of four years, and two shall be appointed for initial terms of five years. Any vacancy occurring on the board shall be filled by the Governor by appointment for the unexpired term.

(d) All members appointed by the Governor shall be confirmed by the Senate. Members appointed when the General Assembly is not in regular session shall serve only until the Senate has confirmed the appointment at the next regular or special session of the General Assembly. If the Senate refuses to confirm an appointment, the member shall vacate his office on the date the confirmation fails.

(e) Members of the board shall not have any direct or indirect interest in an undertaking that puts their personal interest in conflict with that of the corporation, including, but not limited to, an interest in a major procurement contract or a participating retailer.

(f) Upon approval by the chairperson, members of the board shall be reimbursed for actual and reasonable expenses incurred for each day's service spent in the performance of the duties of the corporation.

(g) The members shall elect from their membership a chairperson and vice chairperson. The members shall also elect a secretary and treasurer who can be the chief executive officer of the corporation. Such officers shall serve for such terms as shall be prescribed by the bylaws of the corporation

or until their respective successors are elected and qualified. No member of the board shall hold more than any one office of the corporation, except that the same person may serve as secretary and treasurer.

(h) The board of directors may delegate to any one or more of its members, to the chief executive officer, or to any agent or employee of the corporation such powers and duties as it may deem proper.

(i) A majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the corporation.

(j) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(k) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all the duties of the board. (Code 1981, § 50-27-5, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-6. Lottery Retailer Advisory Board.

(a) The chairperson of the board of directors shall appoint a Lottery Retailer Advisory Board to be composed of ten lottery retailers representing the broadest possible spectrum of geographical, racial, and business characteristics of lottery retailers. The function of the advisory board shall be to advise the board of directors on retail aspects of the lottery and to present the concerns of lottery retailers throughout the state.

(b) Members appointed to the Lottery Retailer Advisory Board shall serve terms of two years; provided, however, that five of the initial appointees shall serve initial terms of one year.

(c) The advisory board shall establish its own rules and internal operating procedures. Members of the advisory board shall serve without compensation or reimbursement of expenses. The advisory board may report to the board of directors or to the oversight committee in writing at any time. The board of directors may invite the advisory board to make an oral presentation to the board of directors at regular meetings of the board. (Code 1981, § 50-27-6, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-7. General duties of board of directors.

The board of directors shall provide the chief executive officer with private-sector perspectives of a large marketing enterprise. The board shall:

(1) Approve, disapprove, amend, or modify the budget recommended by the chief executive officer for the operation of the corporation;

(2) Approve, disapprove, amend, or modify the terms of major lottery procurements recommended by the chief executive officer;

- (3) Hear appeals of hearings required by this chapter;
- (4) Adopt regulations, policies, and procedures relating to the conduct of lottery games and as specified in Code Section 50-27-9; and
- (5) Perform such other functions as specified by this chapter. (Code 1981, § 50-27-7, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-8. Appointment of chief executive officer; compensation.

The board of directors shall appoint and shall provide for the compensation of a chief executive officer who shall be an employee of the corporation and who shall direct the day-to-day operations and management of the corporation and shall be vested with such powers and duties as specified by the board and by law. The chief executive officer shall serve at the pleasure of the board. (Code 1981, § 50-27-8, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-9. General powers of corporation.

(a) The corporation shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state and which are generally exercised by corporations engaged in entrepreneurial pursuits, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a seal;

(3) To adopt, amend, and repeal bylaws, regulations, and policies and procedures for the regulation of its affairs and the conduct of its business; to elect and prescribe the duties of officers and employees of the corporation; and to perform such other matters as the corporation may determine. In the adoption of bylaws, regulations, policies, and procedures or in the exercise of any regulatory power, the corporation shall be exempt from the requirements of Chapter 13 of this title, the "Georgia Administrative Procedure Act";

(4) To procure or to provide insurance;

(5) To hold copyrights, trademarks, and service marks and enforce its rights with respect thereto;

(6) To initiate, supervise, and administer the operation of the lottery in accordance with the provisions of this chapter and regulations, policies, and procedures adopted pursuant thereto;

(7) To enter into written agreements with one or more other states or sovereigns for the operation, participation in marketing, and promotion of a joint lottery or joint lottery games;

(8) To conduct such market research as is necessary or appropriate, which may include an analysis of the demographic characteristics of the players of each lottery game and an analysis of advertising, promotion, public relations, incentives, and other aspects of communication;

(9) To acquire or lease real property and make improvements thereon and acquire by lease or by purchase personal property, including, but not limited to, computers; mechanical, electronic, and on-line equipment and terminals; and intangible property, including, but not limited to, computer programs, systems, and software;

(10) To enter into contracts to incur debt in its own name and enter into financing agreements with the state, agencies or instrumentalities of the state, or with any commercial bank or credit provider; provided, however, that any such debt must be approved by the Georgia State Financing and Investment Commission;

(11) To be authorized to administer oaths, take depositions, issue subpoenas, and compel the attendance of witnesses and the production of books, papers, documents, and other evidence relative to any investigation or proceeding conducted by the corporation;

(12) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel and hearing officers to conduct hearings required by this chapter, and to fix their compensation, pay their expenses, and provide a benefit program, including, but not limited to, a retirement plan and a group insurance plan;

(13) To select and contract with vendors and retailers;

(14) To enter into contracts or agreements with state or local law enforcement agencies for the performance of law enforcement, background investigations, and security checks;

(15) To enter into contracts of any and all types on such terms and conditions as the corporation may determine;

(16) To establish and maintain banking relationships, including, but not limited to, establishment of checking and savings accounts and lines of credit;

(17) To advertise and promote the lottery and lottery games;

(18) To act as a retailer, to conduct promotions which involve the dispensing of lottery tickets or shares, and to establish and operate a sales facility to sell lottery tickets or shares and any related merchandise; and

(19) To adopt and amend such regulations, policies, and procedures as necessary to carry out and implement its powers and duties, organize

and operate the corporation, regulate the conduct of lottery games in general, and any other matters necessary or desirable for the efficient and effective operation of the lottery or the convenience of the public. The promulgation of any such regulations, policies, and procedures shall be exempt from the requirements of Chapter 13 of this title, the "Georgia Administrative Procedure Act."

(b) The powers enumerated in subsection (a) of this Code section are cumulative of and in addition to those powers enumerated elsewhere in this chapter, and no such powers limit or restrict any other powers of the corporation. (Code 1981, § 50-27-9, enacted by Ga. L. 1992, p. 3173, § 2.)

Code Commission notes. — Pursuant to inserted following "policies" in the second Code Section 28-9-5, in 1992, a comma was sentence in paragraph (a)(19).

50-27-10. Adoption by board of procedures regulating conduct of lottery games.

The board may adopt regulations, policies, and procedures regulating the conduct of lottery games in general, including, but not limited to, regulations, policies, and procedures specifying:

(1) The type of games to be conducted, including, but not limited to, instant lotteries, on-line games, and other games traditional to the lottery. Such games may include the selling of tickets or shares or the use of electronic or mechanical devices;

(2) The sale price of tickets or shares and the manner of sale; provided, however, that all sales shall be for cash only and payment by checks, credit cards, charge cards, or any form of deferred payment is prohibited;

(3) The number and amount of prizes;

(4) The method and location of selecting or validating winning tickets or shares;

(5) The manner and time of payment of prizes, which may include lump sum payments or installments over a period of years;

(6) The manner of payment of prizes to the holders of winning tickets or shares, including without limitation provision for payment of prizes not exceeding \$600.00 after deducting the price of the ticket or share and after performing validation procedures appropriate to the game and as specified by the board. The board may provide for a limited number of retailers who can pay prizes of up to \$5,000.00 after performing validation procedures appropriate to the game and as specified by the board without regard to where such ticket or share was purchased;

(7) The frequency of games and drawings or selection of winning tickets or shares;

(8) The means of conducting drawings;

(9)(A) The method to be used in selling tickets or shares, which may include the use of electronic or mechanical devices, but such devices may be placed only in locations on the premises of the lottery retailer which are within the view of such retailer or an employee of such retailer. All electronic or mechanical devices shall bear a conspicuous label prohibiting the use of such device by persons under 18 years of age.

(B) A lottery retailer who knowingly allows a person under 18 years of age to purchase a lottery ticket or share from an electronic or mechanical device shall be subject to the penalties provided in Code Section 50-27-26;

(10) The manner and amount of compensation to lottery retailers; and

(11) Any and all other matters necessary, desirable, or convenient toward ensuring the efficient and effective operation of lottery games, the continued entertainment and convenience of the public, and the integrity of the lottery. (Code 1981, § 50-27-10, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 1372, § 1.)

50-27-11. Duties of chief executive officer.

(a) The chief executive officer of the corporation shall direct and supervise all administrative and technical activities in accordance with the provisions of this chapter and with the regulations, policies, and procedures adopted by the board. It shall be the duty of the chief executive officer to:

(1) Facilitate the initiation and supervise and administer the operation of the lottery games;

(2) Employ and direct such personnel as deemed necessary;

(3) Employ by contract and compensate such persons and firms as deemed necessary;

(4) Promote or provide for promotion of the lottery and any functions related to the corporation;

(5) Prepare a budget for the approval of the board;

(6) Require bond from such retailers and vendors in such amounts as required by the board;

(7) Report quarterly to the state auditor, the state accounting officer, and the board a full and complete statement of lottery revenues and expenses for the preceding quarter; and

(8) Perform other duties generally associated with a chief executive officer of a corporation of an entrepreneurial nature.

(b) The chief executive officer may for good cause suspend, revoke, or refuse to renew any contract entered into in accordance with the provisions of this chapter or the regulations, policies, and procedures of the board.

(c) The chief executive officer or his designee may conduct hearings and administer oaths to persons for the purpose of assuring the security or integrity of lottery operations or to determine the qualifications of or compliance by vendors and retailers. (Code 1981, § 50-27-11, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2005, p. 694, § 17/HB 293.)

50-27-12. Employees; compensation; restrictions; background investigations; bonding.

(a) The corporation shall establish and maintain a personnel program for its employees and fix the compensation and terms of compensation of its employees, including, but not limited to, production incentive payments.

(b) No employee of the corporation shall have a financial interest in any vendor doing business or proposing to do business with the corporation.

(c) No employee of the corporation with decision-making authority shall participate in any decision involving a retailer with whom the employee has a financial interest.

(d) No employee of the corporation who leaves the employment of the corporation may represent any vendor or lottery retailer before the corporation for a period of two years following termination of employment with the corporation.

(e) Background investigation shall be conducted on each applicant who has reached the final selection process prior to employment by the corporation at the level of division director and above and at any level within any division of security and as otherwise required by the board. The corporation shall be authorized to pay for the actual cost of such investigations and may contract with the Georgia Bureau of Investigation for the performance of such investigations. The results of such a background investigation shall not be considered a record open to the public pursuant to Article 4 of Chapter 18 of this title.

(f) No person who has been convicted of a felony or bookmaking or other forms of illegal gambling or of a crime involving moral turpitude shall be employed by the corporation.

(g) The corporation shall bond corporation employees with access to corporation funds or lottery revenue in such an amount as provided by the board and may bond other employees as deemed necessary. (Code 1981, § 50-27-12, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-13. Disposition of lottery proceeds; budget report by Governor; appropriations by General Assembly; shortfall reserve subaccount.

(a)(1) All lottery proceeds shall be the property of the corporation.

(2) From its lottery proceeds the corporation shall pay the operating expenses of the corporation. As nearly as practical, at least 45 percent of the amount of money from the actual sale of lottery tickets or shares shall be made available as prize money; provided, however, that this paragraph shall be deemed not to create any lien, entitlement, cause of action, or other private right, and any rights of holders of tickets or shares shall be determined by the corporation in setting the terms of its lottery or lotteries.

(3) As nearly as practical, for each fiscal year, net proceeds shall equal at least 35 percent of the lottery proceeds. However, for the first two full fiscal years and any partial first fiscal year of the corporation, net proceeds need only equal 30 percent of the proceeds as nearly as practical.

(b)(1) On or before the fifteenth day of each quarter, the corporation shall transfer to the general fund of the state treasury, for credit to the Lottery for Education Account for the preceding quarter, the amount of all net proceeds during the preceding quarter. The director of the Office of Treasury and Fiscal Services shall separately account for net proceeds by establishing and maintaining a Lottery for Education Account within the state treasury.

(2) Upon their deposit into the state treasury, any moneys representing a deposit of net proceeds shall then become the unencumbered property of the State of Georgia and the corporation shall have no power to agree or undertake otherwise. Such moneys shall be invested by the director in accordance with state investment practices. All earnings attributable to such investments shall likewise be the unencumbered property of the state and shall accrue to the credit of the Lottery for Education Account.

(3) A scholarship shortfall reserve subaccount shall be maintained within the Lottery for Education Account. An amount equal to 10 percent of the total amount of lottery proceeds disbursed during the preceding fiscal year in the form of scholarships and grants for higher education shall be deposited from lottery proceeds each year until such amount equals 50 percent of such sum. Thereafter, only an amount necessary to maintain the scholarship shortfall reserve subaccount in an amount equal to 50 percent of the amount of lottery proceeds disbursed during the preceding fiscal year shall be deposited into the subaccount. If the net proceeds paid into the Lottery for Education Account in any

year are not sufficient to meet the amount appropriated for higher education scholarships, the shortfall reserve subaccount may be drawn upon to meet the deficiency. In the event it becomes necessary to draw from the reserve subaccount in any fiscal year, the scholarship program shall be reviewed and shall be reduced to accommodate available lottery proceeds, exclusive of the scholarship shortfall reserve subaccount, through such methods as reducing the family income cap qualification, reducing or eliminating grants for student fees and books, and reducing the academic years funded.

(4) A shortfall reserve subaccount shall be maintained within the Lottery for Education Account. The amount of the shortfall reserve subaccount shall be equal to 10 percent of the total amount of lottery proceeds deposited into the Lottery for Education Account for the preceding fiscal year. If the net proceeds deposited into the Lottery for Education Account in any year, exclusive of the amount in the shortfall reserve subaccount, are not sufficient to meet the amount appropriated for education purposes pursuant to subsection (c) of this Code section, the shortfall reserve subaccount may be drawn upon to meet the deficiency. In the event the shortfall reserve subaccount is drawn upon, the subaccount shall be brought back to the appropriate level with the first available funds duly deposited into the Lottery for Education Account.

(5)(A) For purposes of this subsection, the term:

(i) “Highest year-end balance” means the highest total amount of unexpended and uncommitted funds in the Lottery for Education Account, as determined by the state auditor, at the end of any fiscal year beginning with Fiscal Year 2004 and continuing through the most recent fiscal year for which the state auditor has verified the amount of such funds, which shall not include amounts contained in the subaccounts provided for in paragraphs (3) and (4) of this subsection.

(ii) “Year-end balance” means the amount, as determined by the state auditor, of unexpended and uncommitted funds in the Lottery for Education Account at the end of a fiscal year, which shall not include amounts contained in the subaccounts provided for in paragraphs (3) and (4) of this subsection.

(B)(i) In the event that the year-end balance of a fiscal year is less than 92 percent of the highest year-end balance, as defined in this paragraph, then all scholarships and grants for book allowances under Part 7 of Article 7 of Chapter 3 of Title 20 shall not exceed \$150.00 per year beginning in the next fiscal year and thereafter. This provision shall not apply to students who are eligible to participate in the federal Pell Grant program.

(ii) In the event that the year-end balance of any subsequent fiscal year is less than 84 percent of the highest year-end balance, as defined in this paragraph, then all scholarships and grants for book allowances under Part 7 of Article 7 of Chapter 3 of Title 20 shall be eliminated beginning in the subsequent fiscal year and thereafter. This provision shall not apply to students who are eligible to participate in the federal Pell Grant program.

(iii) In the event that the year-end balance of any further subsequent fiscal year is less than 75 percent of the highest year-end balance, as defined in this paragraph, then all scholarships and grants for mandatory fees under Part 7 of Article 7 of Chapter 3 of Title 20 shall be eliminated beginning in the next fiscal year and thereafter.

(c)(1) In the budget report to the General Assembly, as a separate budget category entitled "lottery proceeds," the Governor shall estimate the amount of net proceeds and treasury earnings thereon to be credited to the Lottery for Education Account during the fiscal year and the amount of unappropriated surplus estimated to be accrued in the account at the beginning of the fiscal year. The sum of estimated net proceeds, treasury earnings thereon, and unappropriated surplus shall be designated lottery proceeds.

(2) In the budget report the Governor shall further make specific recommendations as to the education programs and purposes for which appropriations should be made from the Lottery for Education Account. The General Assembly shall appropriate from the Lottery for Education Account by specific reference to it, or by reference to "lottery proceeds." All appropriations of lottery proceeds to any particular budget unit shall be made together in a separate part entitled, identified, administered, and accounted for separately as a distinct budget unit for lottery proceeds. Such appropriations shall otherwise be made in the manner required by law for appropriations.

(3) It is the intent of the General Assembly that appropriations from the Lottery for Education Account shall be for educational purposes and projects only.

(4) If, for any educational purpose or program, less is appropriated in or during the fiscal year than is authorized, the excess shall be available for appropriation the following fiscal year and shall not retain its character as funds for the particular purpose.

(d) Appropriations for educational purposes and programs from the account not committed during the fiscal year shall lapse to the general fund and shall be credited to the Lottery for Education Account.

(e) Except as qualified by this chapter, appropriations from the Lottery for Education Fund shall be subject to Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act."

(f) In compliance with the requirement of the Constitution that there shall be a separate accounting of lottery proceeds, no deficiency in the Lottery for Education Account shall be replenished by book entries reducing any nonlottery reserve of general funds, including specifically but without limitation the revenue shortfall reserve or the midyear adjustment reserve; nor shall any program or project started specifically from lottery proceeds be continued from the general fund; such programs must be adjusted or discontinued according to available lottery proceeds unless the General Assembly by general law establishes eligibility requirements and appropriates specific funds within the general appropriations Act; nor shall any nonlottery surplus in the general fund be reduced. No surplus in the Lottery for Education Account shall be reduced to correct any nonlottery deficiencies in sums available for general appropriations, and no surplus in the Lottery for Education Account shall be included in any surplus calculated for setting aside any nonlottery reserve or midyear adjustment reserve. In calculating net revenue collections for the revenue shortfall reserve and midyear adjustment reserve, the state accounting officer shall not include the net proceeds. (Code 1981, § 50-27-13, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1993, p. 1402, § 18; Ga. L. 1994, p. 425, § 1; Ga. L. 1994, p. 470, § 1; Ga. L. 1994, p. 1662, § 1; Ga. L. 2004, p. 922, § 10; Ga. L. 2005, p. 694, § 18/HB 293; Ga. L. 2009, p. 313, § 1/HB 157.)

The 2009 amendment, effective July 1, 2009, rewrote paragraph (b)(5).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, paragraph (b)(3), enacted by Ga. L. 1994, p. 425, § 1, was redesignated as paragraph (b)(4).

Law reviews. — For article on the 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 107 (2004).

50-27-14. Participation by minority businesses.

It is the intent of the General Assembly that the corporation encourage participation by minority businesses. Accordingly, the board of directors shall adopt a plan which achieves to the greatest extent possible a level of participation by minority businesses taking into account the total number of all retailers and vendors, including any subcontractors. The corporation is authorized and directed to undertake training programs and other educational activities to enable such minority businesses to compete for contracts on an equal basis. The board shall monitor the results of minority business participation and shall report the results of minority business participation to the Governor at least on an annual basis. (Code 1981, § 50-27-14, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-15. Investigation of vendors; disclosure requirements; restrictions on entry into procurement contracts.

(a) The corporation shall investigate the financial responsibility, security, and integrity of any lottery system vendor who is a finalist in submitting a

bid, proposal, or offer as part of a major procurement. At the time of submitting such bid, proposal, or offer to the corporation, the corporation may require the following items:

(1) A disclosure of the vendor's name and address and, as applicable, the names and addresses of the following:

(A) If the vendor is a corporation, the officers, directors, and each stockholder in such corporation; provided, however, that in the case of owners of equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to own beneficially 5 percent or more of such securities need be disclosed;

(B) If the vendor is a trust, the trustee and all persons entitled to receive income or benefits from the trust;

(C) If the vendor is an association, the members, officers, and directors; and

(D) If the vendor is a partnership or joint venture, all of the general partners, limited partners, or joint venturers;

(2) A disclosure of all the states and jurisdictions in which the vendor does business and the nature of the business for each such state or jurisdiction;

(3) A disclosure of all the states and jurisdictions in which the vendor has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each such state or jurisdiction;

(4) A disclosure of all the states and jurisdictions in which the vendor has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a lottery or gaming license of any kind or had fines or penalties assessed to his license, contract, or operation and the disposition of such in each such state or jurisdiction. If any lottery or gaming license or contract has been revoked or has not been renewed or any lottery or gaming license or application has been either denied or is pending and has remained pending for more than six months, all of the facts and circumstances underlying the failure to receive such a license shall be disclosed;

(5) A disclosure of the details of any finding or plea, conviction, or adjudication of guilt in a state or federal court of the vendor for any felony or any other criminal offense other than a traffic violation;

(6) A disclosure of the details of any bankruptcy, insolvency, reorganization, or corporate or individual purchase or takeover of another corporation, including bonded indebtedness, or any pending litigation of the vendor; and

(7) Such additional disclosures and information as the corporation may determine to be appropriate for the procurement involved.

If at least 25 percent of the cost of a vendor's contract is subcontracted, the vendor shall disclose all of the information required by this Code section for the subcontractor as if the subcontractor were itself a vendor.

(b) A lottery procurement contract shall not be entered into with any lottery system vendor who has not complied with the disclosure requirements described in subsection (a) of this Code section, and any contract with such a vendor is voidable at the option of the corporation. Any contract with a vendor who does not comply with such requirements for periodically updating such disclosures during the tenure of contract as may be specified in such contract may be terminated by the corporation. The provisions of this Code section shall be construed broadly and liberally to achieve the ends of full disclosure of all information necessary to allow for a full and complete evaluation by the corporation of the competence, integrity, background, and character of vendors for major procurements.

(c) A major procurement contract shall not be entered into with any vendor who has been found guilty of a felony related to the security or integrity of the lottery in this or any other jurisdiction.

(d) A major procurement contract shall not be entered into with any vendor if such vendor has an ownership interest in an entity that had supplied consultation services under contract to the corporation regarding the request for proposals pertaining to those particular goods or services.

(e) No lottery system vendor nor any applicant for a major procurement contract may pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding \$100.00 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person. (Code 1981, § 50-27-15, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-16. Bonding requirements for vendors; qualifications of vendors; competitive bid requirement.

(a)(1) Each vendor shall, at the execution of the contract with the corporation, post a performance bond or letter of credit from a bank or credit provider acceptable to the corporation in an amount as deemed necessary by the corporation for that particular bid or contract. In lieu of the bond, a vendor may, to assure the faithful performance of its obligations, deposit and maintain with the corporation securities that are interest bearing or accruing and that are rated in one of the three highest classifications by an established nationally recognized investment rating service. Securities eligible under this Code section are limited to:

(A) Certificates of deposit issued by solvent banks or savings associations approved by the corporation and which are organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the government of the United States is pledged for the payment of principal and interest; and

(C) Corporate bonds approved by the corporation. The corporation which issued the bonds shall not be an affiliate or subsidiary of the depositor.

Such securities shall be held in trust and shall have at all times a market value at least equal to the full amount estimated to be paid annually to the lottery vendor under contract.

(2) Because of certain economic considerations, minority businesses may not be able financially to comply with the bonding, deposit of securities, or letter of credit requirements of paragraph (1) of this subsection. Notwithstanding any other provisions of this subsection, in order to assure minority participation in major procurement contracts to the most feasible and practicable extent possible, the chief executive officer is authorized and directed to waive the bonding, deposit of securities, and letter of credit requirements of paragraph (1) of this subsection for a period of five years from the time that a minority business enters into a major procurement contract for any minority business which substantiates financial hardship pursuant to the policies and procedures established by the board.

(b) Each vendor shall be qualified to do business in this state and shall file appropriate tax returns as provided by the laws of this state. All contracts under this Code section shall be governed by the laws of this state.

(c) No contract shall be let with any vendor in which a public official, as defined by Code Section 45-10-20, has an ownership interest of 10 percent or more.

(d) All major procurement contracts must be competitively bid pursuant to policies and procedures approved by the board unless there is only one qualified vendor and that vendor has an exclusive right to offer the service or product. (Code 1981, § 50-27-16, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-17. State-wide network of retailers; commissions; certificate of authority; qualifications of retailers; fees for outlets; review of activities; gifts or gratuities.

(a) The General Assembly recognizes that to conduct a successful lottery, the corporation must develop and maintain a state-wide network of lottery

retailers that will serve the public convenience and promote the sale of tickets or shares and the playing of lottery games while ensuring the integrity of the lottery operations, games, and activities.

(b) The corporation must make every effort to provide small retailers a chance to participate in the sales of lottery tickets or shares.

(c) The corporation shall provide for compensation to lottery retailers in the form of commissions in an amount of not less than 5 percent of gross sales and may provide for other forms of compensation for services rendered in the sale or cashing of lottery tickets or shares.

(d) The corporation shall issue a certificate of authority to each person with whom it contracts as a retailer for purposes of display. Every lottery retailer shall post and keep conspicuously displayed in a location on the premises accessible to the public its certificate of authority. No certificate shall be assignable or transferable.

(e) The board shall develop a list of objective criteria upon which the qualification of lottery retailers shall be based. Separate criteria shall be developed to govern the selection of retailers of instant tickets and on-line retailers. In developing these criteria, the board shall consider such factors as the applicant's financial responsibility, security of the applicant's place of business or activity, accessibility to the public, integrity, and reputation. The board shall not consider political affiliation, activities, or monetary contributions to political organizations or candidates for any public office. The criteria shall include but not be limited to the following:

(1) The applicant shall be current in filing all applicable tax returns to the State of Georgia and in payment of all taxes, interest, and penalties owed to the State of Georgia, excluding items under formal appeal pursuant to applicable statutes. The Department of Revenue is authorized and directed to provide this information to the corporation;

(2) No person, partnership, unincorporated association, corporation, or other business entity shall be selected as a lottery retailer who:

(A) Has been convicted of a criminal offense related to the security or integrity of the lottery in this or any other jurisdiction;

(B) Has been convicted of any illegal gambling activity, false statements, false swearing, or perjury in this or any other jurisdiction or convicted of any crime punishable by more than one year of imprisonment or a fine of more than \$1,000.00 or both unless the person's civil rights have been restored and at least five years have elapsed from the date of the completion of the sentence without a subsequent conviction of a crime described in this subparagraph;

(C) Has been found to have violated the provisions of this chapter or any regulation, policy, or procedure of the corporation unless either

ten years have passed since the violation or the board finds the violation both minor and unintentional in nature;

(D) Is a vendor or any employee or agent of any vendor doing business with the corporation;

(E) Resides in the same household as an officer of the corporation;

(F) Has made a statement of material fact to the corporation knowing such statement to be false; or

(G) Is engaged exclusively in the business of selling lottery tickets or shares; provided, however, that this subsection shall not preclude the corporation from selling or giving away lottery tickets or shares for promotional purposes;

(3) Persons applying to become lottery retailers shall be charged a uniform application fee for each lottery outlet. Retailers who participate in on-line games shall be charged a uniform application fee for each on-line outlet;

(4) Any lottery retailer contract executed pursuant to this Code section may, for good cause, be suspended, revoked, or terminated by the chief executive officer or his designee if the retailer is found to have violated any provision of this chapter or objective criteria established by the board. Review of such activities shall be in accordance with the procedures outlined in this chapter and shall not be subject to Chapter 13 of this title, the "Georgia Administrative Procedure Act"; and

(5) All lottery retailer contracts may be renewable annually in the discretion of the corporation unless sooner canceled or terminated.

(f) No lottery retailer or applicant to be a lottery retailer shall pay, give, or make any economic opportunity, gift, loan, gratuity, special discount, favor, hospitality, or service, excluding food and beverages having an aggregate value not exceeding \$100.00 in any calendar year, to the chief executive officer, any board member, or any employee of the corporation or to a member of the immediate family residing in the same household as any such person. (Code 1981, § 50-27-17, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 599, § 1.)

50-27-18. Retailer contracts not transferable or assignable; restriction on contracts and sales.

(a) No lottery retailer contract shall be transferable or assignable. No lottery retailer shall contract with any person for lottery goods or services except with the approval of the board.

(b) Lottery tickets and shares shall only be sold by the retailer stated on the lottery retailer certificate. (Code 1981, § 50-27-18, enacted by Ga. L. 1992, p. 3173, § 2.)

JUDICIAL DECISIONS

Bankruptcy by lottery retailer. — Where a Chapter 7 debtor executed retail lottery contract with the state as officer of a corporation that had not yet been formed, subsequent adoption of the pre-incorporation contract by the corporation was not equiva-

lent of assignment or transfer and would not be prohibited by O.C.G.A. § 50-27-18. *Ga. Lottery Corp. v. Ingram (In re Ingram)*, Bankr. , 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

50-27-19. Fidelity fund for retailers; assessments.

(a) The corporation may establish a fidelity fund separate from all other funds and shall assess each retailer a one-time fee not to exceed \$100.00 per sales location. The corporation is authorized to invest the funds or place such funds in one or more interest-bearing accounts. Moneys deposited to the fund may be used to cover losses the corporation experiences due to nonfeasance, misfeasance, or malfeasance of a lottery retailer. In addition, the funds may be used to purchase blanket bonds covering the Georgia Lottery Corporation against losses from all retailers. At the end of each fiscal year, the corporation shall pay to the general lottery fund any amount in the fidelity fund which exceeds \$500,000.00, and such funds shall be commingled with and treated as net proceeds from the lottery.

(b) A reserve account may be established as a general operating expense to cover amounts deemed uncollectable. The corporation shall establish procedures for minimizing any losses that may be experienced for the foregoing reasons and shall exercise and exhaust all available options in such procedures prior to amounts being written off to this account.

(c) The corporation may require any retailer to post an appropriate bond, as determined by the corporation, using an insurance company acceptable to the corporation. The amount should not exceed the applicable district sales average of lottery tickets for two billing periods.

(d)(1) In its discretion, the corporation may allow a retailer to deposit and maintain with the corporation securities that are interest bearing or accruing. Securities eligible under this paragraph shall be limited to:

(A) Certificates of deposit issued by solvent banks or savings associations organized and existing under the laws of this state or under the laws of the United States;

(B) United States bonds, notes, and bills for which the full faith and credit of the United States is pledged for the payment of principal and interest;

(C) Federal agency securities by an agency or instrumentality of the United States government.

(2) Such securities shall be held in trust in the name of the Georgia Lottery Corporation. (Code 1981, § 50-27-19, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1995, p. 635, § 1.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, “uncollectable” was substituted for “uncollectible” in subsection (b); in paragraph (d)(1), “interest bearing” was substituted for “interest-bearing” in the introductory language, semi-

colons were substituted for periods at the end of subparagraphs (d)(1)(A) and (d)(1)(B), and “Federal agency securities” was substituted for “Federal Agency Securities” in subparagraph (d)(1)(C).

50-27-20. Cancellation, suspension, revocation, or termination of retail contracts.

(a) Any retail contract executed by the corporation pursuant to this chapter shall specify the reasons for which a contract may be canceled, suspended, revoked, or terminated by the corporation, which reasons shall include but not be limited to:

(1) Commission of a violation of this chapter, a regulation, or a policy or procedure of the corporation;

(2) Failure to accurately or timely account for lottery tickets, lottery games, revenues, or prizes as required by the corporation;

(3) Commission of any fraud, deceit, or misrepresentation;

(4) Insufficient sales;

(5) Conduct prejudicial to public confidence in the lottery;

(6) The retailer filing for or being placed in bankruptcy or receivership;

(7) Any material change as determined in the sole discretion of the corporation in any matter considered by the corporation in executing the contract with the retailer; or

(8) Failure to meet any of the objective criteria established by the corporation pursuant to this chapter.

(b) If, in the discretion of the chief executive officer or his designee cancellation, denial, revocation, suspension, or rejection of renewal of a lottery retailer contract is in the best interest of the lottery, the public welfare, or the State of Georgia, the chief executive officer or his designee may cancel, suspend, revoke, or terminate, after notice and a right to a hearing, any contract issued pursuant to this chapter. Such contract may, however, be temporarily suspended by the chief executive officer or his designee without prior notice pending any prosecution, hearing, or investigation, whether by a third party or by the chief executive officer. A contract may be suspended, revoked, or terminated by the chief executive officer or his designee for any one or more of the reasons enumerated in this Code section. Any hearing held shall be conducted by the chief executive officer or his designee. A party to the contract aggrieved by the decision of the chief executive officer or his designee may appeal the

adverse decision to the board. Such appeal shall be pursuant to the regulations, policies, and procedures set by the board and is not subject to Chapter 13 of this title, the “Georgia Administrative Procedure Act.” (Code 1981, § 50-27-20, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-21. Preservation of lottery proceeds by retailers; accounting procedures; preference accorded proceeds of insolvent retailers.

(a) All proceeds from the sale of the lottery tickets or shares shall constitute a trust fund until paid to the corporation either directly or through the corporation’s authorized collection representative. A lottery retailer and officers of a lottery retailer’s business shall have a fiduciary duty to preserve and account for lottery proceeds and lottery retailers shall be personally liable for all proceeds. Proceeds shall include unsold instant tickets received by a lottery retailer and cash proceeds of the sale of any lottery products, net of allowable sales commissions and credit for lottery prizes sold to or paid to winners by lottery retailers. Sales proceeds and unused instant tickets shall be delivered to the corporation or its authorized collection representative upon demand.

(b) The corporation shall require retailers to place all lottery proceeds due the corporation in accounts in institutions insured by the Federal Deposit Insurance Corporation not later than the close of the next banking day after the date of their collection by the retailer until the date they are paid over to the corporation. At the time of such deposit, lottery proceeds shall be deemed to be the property of the corporation. The corporation may require a retailer to establish a single separate electronic funds transfer account where available for the purpose of receiving moneys from ticket or share sales, making payments to the corporation, and receiving payments for the corporation. Unless otherwise authorized in writing by the corporation, each lottery retailer shall establish a separate bank account for lottery proceeds which shall be kept separate and apart from all other funds and assets and shall not be commingled with any other funds or assets.

(c) Whenever any person who receives proceeds from the sale of lottery tickets or shares in the capacity of a lottery retailer becomes insolvent or dies insolvent, the proceeds due the corporation from such person or his estate shall have preference over all debts or demands. (Code 1981, § 50-27-21, enacted by Ga. L. 1992, p. 3173, § 2.)

JUDICIAL DECISIONS

Property held in trust. — Because policies and procedures of the Georgia Lottery Corporation define “Confirmed” Instant Tickets as absolute proof that the retailer has received the tickets, in addition to tickets sold, all tickets “Confirmed” constitute

property held in trust. *Suwannee Swifty Stores, Inc. v. Georgia Lottery Corp.*, 266 B.R. 544 (Bankr. M.D. Ga. 2001).

Funds which a bankruptcy debtor transferred post-petition to the Georgia Lottery Corporation were property of the statutory

trust; although the debtor transferred these funds from the debtor's commingled general operating accounts, these payments were voluntary payments and the payments were conclusively presumed to be sufficiently connected to the trust. *Suwannee Swifty Stores, Inc. v. Georgia Lottery Corp.*, 266 B.R. 544 (Bankr. M.D. Ga. 2001).

Georgia Lottery Corporation was entitled to summary judgment on the corporations claim that the debt owed by a bankruptcy debtor, a lottery retailer, for proceeds from the sale of lottery tickets was nondischargeable under 11 U.S.C. § 523(a)(4) because O.C.G.A. § 50-27-21, enacted prior to the parties' contractual relationship, created a technical trust in favor of the creditor in the proceeds; the retailer contract created a fiduciary relationship before the creation of the debt, whereby the debtor had a duty to preserve and account for lottery proceeds, and the debtor committed a defalcation in a fiduciary capacity when the debtor failed to remit a large amount of money to the creditor. *Ga. Lottery Corp. v. McKibben* (In re McKibben), Bankr. , 2005 Bankr. LEXIS 297 (Bankr. N.D. Ga. Jan. 5, 2005).

Georgia Lottery for Education Act, O.C.G.A. § 50-27-21(a), created a statutory trust in favor of the Georgia Lottery Corporation over proceeds from sale of lottery tickets; that statutory trust was an express trust and therefore imposed a fiduciary duty upon the retailer and its Chapter 7 debtor/officers within the meaning of 11 U.S.C. § 523(a)(4). *Ga. Lottery Corp. v. Ingram* (In re Ingram), Bankr. , 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

Lotteries. — Bank converted state lottery funds where they were deposited in retailer's segregated lottery account and the bank later put a hold on the funds at the retailer's request and prevented the state lottery from accessing the funds. Once the funds were deposited into the lottery account, neither the bank nor the retailer had authority to restrict the state lottery's access to those funds. *Ga. Lottery Corp. v. First Nat'l Bank*, 253 Ga. App. 784, 560 S.E.2d 345 (2002).

Fiduciary duty. — In a Chapter 7 bankruptcy proceeding, a debtor's failure to remit lottery proceeds from the debtor's retail store to the Georgia Lottery Corporation satisfied the defalcation while acting in a

fiduciary capacity exception to discharge provision under § 523(a)(4) of the Bankruptcy Code, 11 U.S.C. § 523(a)(4). *Georgia Lottery Corp. v. Thompson* (In re Thompson), 296 B.R. 563 (Bankr. M.D. Ga. 2003).

Contract with the creditor, and O.C.G.A. § 50-27-21(a), imposed a fiduciary duty on a debtor to deposit the proceeds of lottery ticket sales on a daily basis in a trust account; the debtor's failure to comply with the terms of the contract amounted to defalcation and the debt was nondischargeable under 11 U.S.C. § 523(a)(4). *Ga. Lottery Corp. v. Lien Sun* (In re Liguan Sun), Bankr. , 2004 Bankr. LEXIS 2266 (Bankr. N.D. Ga. Sept. 27, 2004).

State lottery corporation was entitled to entry of judgment as a matter of law on the corporation's claim against a bankrupt debtor, the sole owner of a retailer that sold lottery tickets, because: O.C.G.A. § 50-27-21(a) expressly imposed a fiduciary duty on the debtor as the sole officer of the retailer, the requirement of an express trust pre-dating the debt existed, and the debtor committed an act of defalcation by using lottery funds to cover expenses of the retailer. *Ga. Lottery Corp. v. Farhan* (In re Farhan), Bankr. , 2004 Bankr. LEXIS 2267 (Bankr. N.D. Ga. Sept. 30, 2004).

O.C.G.A. § 50-27-21, which pertains to lottery ticket retail sellers, imposes fiduciary duties on the retailers sufficient to create a technical trust for purposes of nondischargeability under 11 U.S.C. § 523(a)(4) because: (1) the statute establishes a trust relationship at the time a lottery retailer enters into a retailer contract; (2) any debt arising out of that relationship is not created until the retailer later fails to account for lottery proceeds; (3) the statute specifically sets forth fiduciary duties to account for lottery proceeds, to maintain lottery proceeds in a separate account, and to make daily deposits in the trust account; (4) the delineation of these duties, along with the express language of the statute, impose a trust relationship over lottery proceeds; and (5) the trust res, the lottery proceeds, is separately identifiable. *Ga. Lottery Corp. v. Premji* (In re Premji), Bankr. , 2006 Bankr. LEXIS 2571 (Bankr. N.D. Ga. Sept. 14, 2006).

Debt owed by a Chapter 7 debtor, who was the sole owner of a lottery retailer, to a state

lottery creditor was not dischargeable under 11 U.S.C. § 523(a)(4) because: (1) O.C.G.A. § 50-27-21 and the retailer contracts that the debtor had signed imposed fiduciary duties on the debtor and were sufficient to create a technical trust with regard to the lottery proceeds; and (2) the debtor's failure to properly account for sales proceeds, and the debtor's improper withdrawal of funds from the lottery sales proceeds trust fund account that the debtor was required to set up and maintain, constituted "defalcation" for purposes of nondischargeability under 11 U.S.C. § 523(a)(4). *Ga. Lottery Corp. v. Premji (In re Premji)*, Bankr. , 2006 Bankr. LEXIS 2571 (Bankr. N.D. Ga. Sept. 14, 2006).

After Chapter 7 debtors, officers of a retail business that sold lottery tickets, were responsible for depositing funds from sales of lottery tickets into a segregated account maintained by their corporation for purpose of remitting lottery proceeds to the state, and failed to do so, the debtors committed defalcation within the meaning of 11 U.S.C. § 523(a)(4) because the debtors had the obligation to account for and produce either the full amount of funds derived from the sale of lottery tickets or unsold tickets. *Ga. Lottery Corp. v. Ingram (In re Ingram)*, Bankr. , 2008 Bankr. LEXIS 1036 (Bankr. N.D. Ga. Feb. 29, 2008).

50-27-22. Computation of rental payments of retailers.

If a lottery retailer's rental payments for the business premises are contractually computed, in whole or in part, on the basis of a percentage of retail sales and such computation of retail sales is not explicitly defined to include sales of tickets or shares in a state operated or state managed lottery, only the compensation received by the lottery retailer from the corporation may be considered the amount of the lottery retail sale for purposes of computing the rental payment. (Code 1981, § 50-27-22, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-23. Restrictions on sale of tickets or shares; price; gifts and promotions.

(a) No person shall sell a ticket or share at a price other than established by the corporation unless authorized in writing by the chief executive officer. No person other than a duly certified lottery retailer shall sell lottery tickets, but this subsection shall not be construed to prevent a person who may lawfully purchase tickets or shares from making a gift of lottery tickets or shares to another. Nothing in this chapter shall be construed to prohibit the corporation from designating certain of its agents and employees to sell or give lottery tickets or shares directly to the public.

(b) Lottery tickets or shares may be given by merchants as a means of promoting goods or services to customers or prospective customers subject to prior approval by the corporation.

(c) No lottery retailer shall sell a lottery ticket or share except from the locations listed in his contract and as evidenced by his certificate of authorization unless the corporation authorizes in writing any temporary location not listed in his contract.

(d) No lottery tickets or shares shall be sold to persons under 18 years of age, but this Code section does not prohibit the purchase of a lottery ticket or share by a person 18 years of age or older for the purpose of making a gift to any person of any age. In such case, the corporation shall direct payment of proceeds of any lottery prize to an adult member of the person's family or a legal representative of the person on behalf of such person. The person named as custodian shall have the same powers and duties as prescribed for a custodian pursuant to Article 5 of Chapter 5 of Title 44. (Code 1981, § 50-27-23, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-24. Prize proceeds subject to state income tax; attachments, garnishments, or executions; validation of winning tickets; prohibited purchases; money-dispensing machines; unclaimed prize money.

(a) Proceeds of any lottery prize shall be subject to the Georgia state income tax.

(b) Except as otherwise provided in Article 2 of this chapter, attachments, garnishments, or executions authorized and issued pursuant to law shall be withheld if timely served upon the corporation. This subsection shall not apply to a retailer.

(c) The corporation shall adopt regulations, policies, and procedures to establish a system of verifying the validity of tickets or shares claimed to win prizes and to effect payment of such prizes, except that:

(1) Except as provided in Code Section 50-27-24.1, no prize, any portion of a prize, or any right of any person to a prize awarded shall be assignable. Any prize or any portion of a prize remaining unpaid at the death of a prize winner shall be paid to the estate of the deceased prize winner or to the trustee of a trust established by the deceased prize winner as settlor if a copy of the trust document or instrument has been filed with the corporation along with a notarized letter of direction from the settlor and no written notice of revocation has been received by the corporation prior to the settlor's death. Following a settlor's death and prior to any payment to such a successor trustee, the corporation shall obtain from the trustee a written agreement to indemnify and hold the corporation harmless with respect to any claims that may be asserted against the corporation arising from payment to or through the trust. Notwithstanding any other provisions of this Code section, any person, pursuant to an appropriate judicial order, shall be paid the prize to which a winner is entitled;

(2) No prize shall be paid arising from claimed tickets that are stolen, counterfeit, altered, fraudulent, unissued, produced or issued in error, unreadable, not received, or not recorded by the corporation within applicable deadlines; lacking in captions that conform and agree with the play symbols as appropriate to the particular lottery game involved; or not

in compliance with such additional specific regulations and public or confidential validation and security tests of the corporation appropriate to the particular lottery game involved;

(3) No particular prize in any lottery game shall be paid more than once, and in the event of a determination that more than one claimant is entitled to a particular prize, the sole remedy of such claimants is the award to each of them of an equal share in the prize; and

(4) A holder of a winning cash ticket or share from a lottery game shall claim a cash prize within 180 days, or for a multistate or multisoovereign lottery game within 180 days, after the drawing in which the cash prize was won. In any Georgia lottery game in which the player may determine instantly if he has won or lost, he shall claim a cash prize within 90 days, or for a multistate lottery game within 180 days, after the end of the lottery game. If a valid claim is not made for a cash prize within the applicable period, the cash prize shall constitute an unclaimed prize for purposes of this Code section.

(d) No prize shall be paid upon a ticket or share purchased or sold in violation of this chapter. Any such prize shall constitute an unclaimed prize for purposes of this Code section.

(e) The corporation is discharged of all liability upon payment of a prize.

(f) No ticket or share shall be purchased by and no prize shall be paid to any member of the board of directors; any officer or employee of the corporation; or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person. No ticket or share shall be purchased by and no prize shall be paid to any officer, employee, agent, or subcontractor of any vendor or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of residence of any such person if such officer, employee, agent, or subcontractor has access to confidential information which may compromise the integrity of the lottery.

(g) No lottery game utilizing an electronic or mechanical machine may use a machine which dispenses coins or currency.

(h) Unclaimed prize money shall not constitute net lottery proceeds. A portion of unclaimed prize money, not to exceed \$200,000.00 annually, shall be directed to the Department of Behavioral Health and Developmental Disabilities for the treatment of compulsive gambling disorder and educational programs related to such disorder. In addition, unclaimed prize money may be added to the pool from which future prizes are to be awarded or used for special prize promotions. (Code 1981, § 50-27-24, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1993, p. 1037, § 1; Ga. L. 2008, p. 370, § 2/HB 515; Ga. L. 2009, p. 453, § 3-2/HB 228.)

The 2008 amendment, effective May 12, 2008, substituted “Except as provided in Code Section 50-27-24.1, no” for “No” at the beginning of paragraph (c)(1).

The 2009 amendment, effective July 1, 2009, substituted “Department of Behavioral Health and Developmental Disabilities” for “Department of Human Resources” in subsection (h).

Code Commission notes. — Pursuant to

Code Section 28-9-5, in 1992, “indemnify” was substituted for “idemnify” in paragraph (c)(1), and “this Code section” was substituted for “Code Section 50-27-24” in paragraph (c)(4).

Administrative rules and regulations. — Returns and collections, Official Compilation of the Rules and Regulations of the State of Georgia, Department of Revenue, Income Tax Division, Chapter 560-7-8.

JUDICIAL DECISIONS

Tickets produced in error. — Applying O.C.G.A. § 50-27-24(c)(2), the law prohibits the Georgia Lottery Commission from paying a cash prize based on a printing error

that happened to resemble the winning symbol. *Georgia Lottery Corp. v. Sumner*, 242 Ga. App. 758, 529 S.E.2d 925 (2000).

50-27-24.1. Payment of prize to person other than winner; assignment of prize rights; hearing; findings justifying approval of voluntary assignment; other requirements.

(a) Under an appropriate judicial order, any prize or any portion of a prize or any right of any person to a prize awarded payable by the corporation in installment payments may be paid to any person other than the winner.

(b) The right of a person to a prize payable by the corporation in installment payments may be voluntarily assigned as a whole or in part if the assignment is made to a person designated in accordance with an order of the superior court in the county where the corporation is located. In the case of a voluntary assignment for consideration made under a judicial order, the assignee shall withhold from the purchase price to be paid to the assignor federal and state income taxes in a manner and amount consistent with the procedures of the corporation and pay such withheld taxes to the proper taxing authority in a timely manner and maintain and file all required records, forms, and reports.

(c) On the filing by the assignor or the assignee in the superior court of a petition seeking approval of a voluntary assignment, the filing party shall schedule a hearing on such petition and serve notice of the hearing on all interested parties. The court shall conduct an evidentiary hearing. If the court finds that:

(1) The assignment is in writing, is executed by the assignor, and is by its terms subject to the laws of the state;

(2) The assignor has provided a sworn affidavit attesting that he or she is of sound mind, is in full command of his or her faculties, and is not acting under duress;

(3) The assignor has been advised about the assignment by an independent attorney who is not related to and not compensated by the assignee or an affiliate of the assignee;

(4) The assignor understands that he or she will not receive the prize payments or parts of payments during the years assigned;

(5) The assignor understands and agrees that the corporation, directors, and officials and employees of the corporation are not liable or responsible for making any of the assigned payments;

(6) The assignee has provided the assignor with a one-page disclosure statement in boldface type not less than 14 points in size, setting forth:

(A) The payments being assigned by the amount and payment date;

(B) The purchase price;

(C) The rate of discount to present value assuming daily compounding and funding on the contract date;

(D) An itemized listing of all brokers' commissions, service charges, application fees, processing fees, closing costs, filing fees, administrative fees, notary fees, and other commissions, fees, costs, expenses, and charges, and a good faith estimate of all legal fees and court costs payable by the assignor or deductible from the gross amount otherwise payable to the assignor;

(E) The net amount payable to the assignor after deduction of all commissions, fees, costs, expenses, and charges described in subparagraph (D) of this paragraph; and

(F) The amount of any penalty and the amount of any liquidated damages, inclusive of penalties, payable by the assignor in the event of any breach of the transfer agreement by the assignor;

(7) The interest rate or discount rate, as applicable, associated with the assignment does not indicate overreaching or exploitation, does not exceed current usury rates, and does not violate any laws of usury of this state; and

(8) The contract of assignment expressly states that the assignor has three business days after signing the contract to cancel the assignment,

the court shall issue an order approving a voluntary assignment and directing the corporation to make prize payments as a whole or in part to the assignee.

(d) Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be given to the corporation's counsel at least ten days before a court hearing. The corporation need not appear in or be named as party to an action that

seeks judicial approval of an assignment but may intervene as of right in the action. A certified copy of a court order approving a voluntary assignment shall be given to the corporation not later than ten days before the date on which the payment is to be made. Written notice of the petition and proposed assignment and any court hearing concerning the petition and proposed assignment shall be served by certified mail to the last known address of any interested party. The interested party need not appear in or be named as party to an action that seeks judicial approval of an assignment but may intervene as of right in the action.

(e) The corporation, not later than ten days after receiving a certified copy of a court order approving a voluntary assignment, shall send the assignor and the assignee written confirmation of the court approved assignment and the intent of the corporation to rely on the assignment in making payments to the assignee named in the order free from any attachments, garnishments, or executions.

(f) A voluntary assignment may not include or cover payments or parts of payments to the assignor to the extent that such payments are subject to attachments, garnishments, or executions authorized and issued pursuant to law as provided in subsection (b) of Code Section 50-27-24. Each court order issued under this subsection shall provide that any obligations of the assignor created by subsection (b) of Code Section 50-27-24 shall be satisfied out of the proceeds to be received by the assignor.

(g) A voluntary assignment may not include portions of payments that are subject to offset on account of a defaulted or delinquent child support obligation, nonwage garnishment, or criminal restitution obligation or on account of a debt owed to a state agency. Each court order issued under subsection (c) of this Code section shall provide that any delinquent child support or criminal restitution obligations of the assignor and any debts owed to a state agency by the assignor, as of the date of the court order, shall be set off by the corporation first against remaining payments or portions thereof due the prize winner and then against payments due the assignee.

(h) The corporation, the directors, officials, and employees of the corporation are not liable under this Code section after payment of an assigned prize is made. The assignor and assignee shall hold harmless and indemnify the corporation, the directors, and the state, and its employees and agents, from all claims, suits, actions, complaints, or liabilities related to the assignment.

(i) The corporation may establish a reasonable fee to defray administrative expenses associated with assignments made under this Code section, including a processing fee imposed by a private annuity provider. The amount of the fee shall reflect the direct and indirect costs of processing assignments.

(j) The assignee shall notify the corporation of its business location and mailing address for payment purposes and of any change in location or address during the entire course of the assignment.

(k) A court order or a combination of court orders under this Code section may not require the corporation to divide a single prize payment among more than three different persons. This Code section does not prohibit the substitution of assignees as long as there are not more than three assignees at any one time for any one prize payment. Any subsequent assignee is bound as the original assignee by the provisions of this Code section and the terms and conditions of the contract of assignment.

(l) If the federal Internal Revenue Service or a court of competent jurisdiction issues a determination letter, revenue ruling, or other public document declaring that the voluntary assignment of prizes will affect the federal income tax treatment of lottery prize winners who do not assign their prizes, then within 15 days after the corporation receives the letter, ruling, or other document, the director of the corporation shall file a copy of it with the Attorney General and a court may not issue an order authorizing a voluntary assignment under this Code section.

(m) The provisions of this Code section shall prevail over any inconsistent provision in Code Section 11-9-109.

(n) Any agreement or option to sell, assign, pledge, hypothecate, transfer, or encumber a lottery prize, or any portion thereof, prior to May 12, 2008, shall be void in its entirety. (Code 1981, § 50-27-24.1, enacted by Ga. L. 2008, p. 370, § 4/HB 515.)

Effective date. — This Code section became effective May 12, 2008.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, “May 12, 2008” was substituted for “the effective date of this Code section” in subsection (n).

50-27-25. Confidentiality of information; investigations; supervision and inspections; reports of suspected violations; assistance in investigation of violations.

(a) Except as authorized in this chapter, the corporation is subject to the provisions of Article 4 of Chapter 18 of this title and Chapter 14 of this title. The corporation is specifically authorized to determine which information relating to the operation of the lottery is confidential. Such information includes trade secrets; security measures, systems, or procedures; security reports; information concerning bids or other contractual data, the disclosure of which would impair the efforts of the corporation to contract for goods or services on favorable terms; employee personnel information unrelated to compensation, duties, qualifications, or responsibilities; and information obtained pursuant to investigations which is otherwise confidential. Information deemed confidential pursuant to this Code section is exempt from the provisions of Article 4 of Chapter 18 of this title. Meetings

or portions of meetings devoted to discussing information deemed confidential pursuant to this Code section are exempt from Chapter 14 of this title.

(b) The corporation shall perform full criminal background investigations prior to the execution of any vendor contract.

(c) The corporation or its authorized agent shall:

(1) Conduct criminal background investigations and credit investigations on all potential retailers;

(2) Supervise ticket or share validation and lottery drawings;

(3) Inspect at times determined solely by the corporation the facilities of any vendor or lottery retailer in order to determine the integrity of the vendor's product or the operations of the retailer in order to determine whether the vendor or the retailer is in compliance with its contract;

(4) Report any suspected violations of this chapter to the appropriate district attorney or the Attorney General and to any law enforcement agencies having jurisdiction over the violation; and

(5) Upon request, provide assistance to any district attorney, the Attorney General, or a law enforcement agency investigating a violation of this chapter. (Code 1981, § 50-27-25, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-26. Sales to minors; penalty; affirmative defense.

Any person who knowingly sells a lottery ticket or share to a person under 18 years of age or permits a person under 18 years of age to play any lottery games shall be guilty of a misdemeanor and shall be fined not less than \$100.00 nor more than \$500.00 for the first offense and for each subsequent offense not less than \$200.00 nor more than \$1,000.00. It shall be an affirmative defense to a charge of a violation under this Code section that the retailer reasonably and in good faith relied upon representation of proof of age in making the sale. (Code 1981, § 50-27-26, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 1994, p. 1372, § 2.)

50-27-27. Penalty for falsely making, altering, forging, uttering, passing, or counterfeiting ticket; penalty for attempting to influence winning of prize.

(a) Any person who, with intent to defraud, falsely makes, alters, forges, utters, passes, or counterfeits a state lottery ticket shall be punished by a fine not to exceed \$50,000.00 or imprisonment for not longer than five years or both.

(b) Any person who influences or attempts to influence the winning of a prize through the use of coercion, fraud, deception, or tampering with

lottery equipment or materials shall be punished by a fine not to exceed \$50,000.00 or by imprisonment for not longer than five years or both. (Code 1981, § 50-27-27, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-28. Penalty for making false statements or false entries in books or records.

No person shall knowingly or intentionally make a material false statement in any application for a license or proposal to conduct lottery activities or make a material false entry in any book or record which is compiled or maintained or submitted to the board pursuant to the provisions of this chapter. Any person who violates the provisions of this Code section shall be punished by a fine not to exceed \$25,000.00 or the dollar amount of the false entry or statement, whichever is greater, or by imprisonment for not longer than five years or both. (Code 1981, § 50-27-28, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-29. Agreements with agencies of other jurisdictions; restriction on release of records, documents, and information.

(a) The corporation may enter into intelligence sharing, reciprocal use, or restricted use agreements with the federal government, law enforcement agencies, lottery regulation agencies, and gaming enforcement agencies of other jurisdictions which provide for and regulate the use of information provided and received pursuant to the agreement.

(b) Records, documents, and information in the possession of the corporation received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the corporation with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency and are not subject to Article 4 of Chapter 18 of this title and shall not be released under any condition without the permission of the person or agency providing the record or information. (Code 1981, § 50-27-29, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-30. Bidding requirements and procedures for contracts.

(a) The corporation shall enter into its contracts for major procurements after competitive bidding. The requirement for competitive bidding does not apply in the case of a single vendor having exclusive rights to offer a particular service or product. Procedures adopted by the board shall be designed to allow the selection of proposals that provide the greatest long-term benefit to the state, the greatest integrity for the corporation, and the best service and products for the public.

(b) In any bidding process, the corporation may administer its own bidding and procurement or may utilize the services of the Department of Administrative Services or other state agency or subdivision thereof. (Code 1981, § 50-27-30, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-31. Appeals from actions of board.

(a) Any retailer, vendor, or applicant for a retailer or vendor contract aggrieved by an action of the board may appeal that decision to the Superior Court of Fulton County.

(b) The Superior Court of Fulton County shall hear appeals from decisions of the board and based upon the record of the proceedings before the board may reverse the decision of the board only if the appellant proves the decision to be:

- (1) Clearly erroneous;
- (2) Arbitrary and capricious;
- (3) Procured by fraud;
- (4) A result of substantial misconduct by the board; or
- (5) Contrary to the United States Constitution or the Constitution of Georgia or the provisions of this chapter.

(c) The superior court may remand an appeal to the board to conduct further hearings.

(d) Any person who appeals the award of a major procurement contract for the supply of a lottery ticket system, share system, or an on-line or other mechanical or electronic system shall be liable for all costs of appeal and defense in the event the appeal is denied or the contract award upheld. Cost of appeal and defense shall specifically include but not be limited to court costs, bond, legal fees, and loss of income to the corporation resulting from institution of the appeal if, upon the motion of the corporation, the court finds the appeal to have been frivolous. (Code 1981, § 50-27-31, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-32. Corporation authorized to borrow money; validation of debt; restriction on use of money in state general fund; purchase or release of goods and services.

(a) The corporation may borrow, or accept and expend, in accordance with the provisions of this chapter, such moneys as may be received from any source, including income from the corporation's operations, for effectuating its corporate purposes, including the payment of the initial expenses of initiation, administration, and operation of the corporation and the lottery.

(b) Any debt of the corporation may be validated pursuant to the provisions of subsection (e) of Code Section 50-17-25, and the provisions of such subsection relating to the State Financing and Investment Commission shall be deemed to apply to the corporation.

(c) The corporation shall be self-sustaining and self-funded. Moneys in the state general fund shall not be used or obligated to pay the expenses of the corporation or prizes of the lottery, and no claim for the payment of an expense of the lottery or prizes of the lottery may be made against any moneys other than moneys credited to the corporation operating account.

(d) The corporation may purchase, lease, or lease-purchase such goods or services as are necessary for effectuating the purposes of this chapter. The corporation may make procurements which integrate functions such as lottery game design, lottery ticket distribution to retailers, supply of goods and services, and advertising. In all procurement decisions, the corporation shall take into account the particularly sensitive nature of the state lottery and shall act to promote and ensure security, honesty, fairness, and integrity in the operation and administration of the lottery and the objectives of raising net proceeds for the benefit of educational programs and purposes. (Code 1981, § 50-27-32, enacted by Ga. L. 1992, p. 3173, § 2.)

50-27-33. Reports by corporation; audits; budget; fiscal year.

To ensure the financial integrity of the lottery, the corporation through its board of directors shall:

(1) Submit quarterly and annual reports to the Governor, state auditor, the state accounting officer, and the oversight committee created by Code Section 50-27-34, disclosing the total lottery revenues, prize disbursements, operating expenses, and administrative expenses of the corporation during the reporting period. The annual report shall additionally describe the organizational structure of the corporation and summarize the functions performed by each organizational division within the corporation;

(2) Adopt a system of internal audits;

(3) Maintain weekly or more frequent records of lottery transactions, including the distribution of tickets or shares to retailers, revenues received, claims for prizes, prizes paid, prizes forfeited, and other financial transactions of the corporation;

(4) Contract with a certified public accountant or firm for an annual financial audit of the corporation. The certified public accountant or firm shall have no financial interest in any vendor with whom the corporation is under contract. The certified public accountant or firm shall present an audit report not later than four months after the end of the fiscal year. The certified public accountant or firm shall evaluate the

internal auditing controls in effect during the audit period. The cost of this annual financial audit shall be an operating expense of the corporation. The state auditor may at any time conduct an audit of any phase of the operations of the Georgia Lottery Corporation at the expense of the state and shall receive a copy of the annual independent financial audit. A copy of any audit performed by the certified public accountant or firm or the state auditor shall be transmitted to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives, the state auditor, the state accounting officer, and the oversight committee chairperson;

(5) Submit to the Office of Planning and Budget, the state auditor, and the state accounting officer by June 30 of each year a copy of the annual operating budget for the corporation for the next fiscal year. This annual operating budget shall be approved by the board and be on such forms as prescribed by the Office of Planning and Budget;

(6) For informational purposes only, submit to the Office of Planning and Budget on September 1 of each year a proposed operating budget for the corporation for the succeeding fiscal year. This budget proposal shall also be accompanied by an estimate of the net proceeds to be deposited into the Lottery for Education Account during the succeeding fiscal year. This budget shall be on such forms as prescribed by the Office of Planning and Budget; and

(7) Adopt the same fiscal year as that used by state government. (Code 1981, § 50-27-33, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2005, p. 694, § 19/HB 293.)

Code Commission notes. — Pursuant to “(a)” designation was deleted from the beginning of the introductory language.

50-27-34. Legislative oversight committee.

(a) There is created as a joint committee of the General Assembly, the Georgia Lottery Corporation Legislative Oversight Committee, to be composed of the members of the House Committee on Regulated Industries and the Senate Economic Development Committee. The chairpersons of such committees shall serve as cochairpersons of the oversight committee. The oversight committee shall periodically inquire into and review the operations of the Georgia Lottery Corporation, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this chapter. The oversight committee may conduct any independent audit or investigation of the authority it deems necessary.

(b) The Georgia Lottery Corporation shall provide the oversight committee not later than December 1 of each year with a complete report of the level of participation of minority businesses in all retail and major procure-

ment contracts awarded by the corporation. (Code 1981, § 50-27-34, enacted by Ga. L. 1992, p. 3173, § 2; Ga. L. 2004, p. 593, § 1; Ga. L. 2009, p. 303, § 5/HB 117.)

The 2009 amendment, effective April 30, 2009, substituted “Senate Economic Development Committee” for “Senate Committee on Economic Development and Tourism” at the end of the first sentence of subsection (a). See the Editor’s note for intent.

Editor’s notes. — Ga. L. 2009, p. 303, § 20, not codified by the General Assembly,

provides that: “This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act.”

ARTICLE 2

SETOFF OF DEBT COLLECTION AGAINST LOTTERY PRIZES

50-27-50. Purpose.

The purpose of this article is to establish a policy and to provide a system whereby all claimant agencies of this state in conjunction with the corporation shall cooperate in identifying debtors who owe money to the state through its various claimant agencies or to persons on whose behalf the state and its claimant agencies act and who qualify for prizes under Article 1 of this chapter from the corporation. It is also the purpose of this article to establish procedures for setting off against any such prize the sum of any debt owed to the state or to persons on whose behalf the state and its claimant agencies act. It is the intent of the General Assembly that this article be liberally construed to effectuate these purposes. (Code 1981, § 50-27-50, enacted by Ga. L. 1993, p. 1037, § 2.)

50-27-51. Definitions.

As used in this article, the term:

(1) “Claimant agency” means any state agency, department, board, bureau, commission, or authority to which an individual owes a debt or which acts on behalf of an individual to collect a debt.

(2) “Debt” means any liquidated sum due and owing any claimant agency, which sum has accrued through contract, subrogation, tort, or operation of law regardless of whether there is an outstanding judgment for the sum, or any sum which is due and owing any person and is enforceable by the state or any of its agencies or departments.

(3) “Debtor” means any individual owing money to or having a delinquent account with any claimant agency, which obligation has not been adjudicated as satisfied by court order, set aside by court order, or discharged in bankruptcy.

(4) "Prize" means the proceeds of any lottery prize awarded under Article 1 of this chapter. (Code 1981, § 50-27-51, enacted by Ga. L. 1993, p. 1037, § 2.)

50-27-52. Collection remedy in addition to other remedies.

The collection remedy authorized by this article is in addition to and not in substitution for any other remedy available by law. (Code 1981, § 50-27-52, enacted by Ga. L. 1993, p. 1037, § 2.)

50-27-53. Debts owed to state agencies lien against lottery winnings; prizes paid out by retailers or noncorporate entities; time period involved; rules and regulations; immunity; costs.

(a) Any claimant agency may submit to the corporation a list of the names of all persons owing debts in excess of \$100.00 to such claimant agency or to persons on whose behalf the claimant agency is acting. The full amount of the debt shall be collectable from any lottery winnings without regard to limitations on the amounts that may be collectable in increments through garnishment or other proceedings. Such list shall constitute a valid lien upon and claim of lien against the lottery winnings of any debtor named in such list. The list shall contain the names of the debtors, their social security numbers if available, and any other information which would assist the corporation in identifying the debtors named in the list.

(b) The corporation is authorized and directed to withhold any winnings subject to the lien created by this Code section and send notice to the winner by certified mail or statutory overnight delivery, return receipt requested, of such action and the reason the winnings were withheld. However, if the winner appears and claims winnings in person, the corporation shall notify the winner at that time by hand delivery of such action. If the debtor does not protest the withholding of such funds in writing within 30 days of such notice, the corporation shall pay the funds over to the claimant agency. If the debtor protests the withholding of such funds within 30 days of such notice, the corporation shall file an action in interpleader in the superior court of the county in which the debtor resides, pay the disputed sum into the registry of the court, and give notice to the claimant agency and debtor of the initiation of such action.

(c) The liens created by this Code section shall rank among themselves as follows:

- (1) Taxes due the state;
- (2) Delinquent child support; and

(3) All other judgments and liens in order of the date entered or perfected.

(d) The corporation shall not be required to deduct claimed debts from prizes paid out by retailers or entities other than the corporation.

(e) Any list of debt provided pursuant to this article shall be provided periodically as the corporation shall provide by rules and regulations and the corporation shall not be obligated to retain such lists or deduct debts appearing on such lists beyond the period determined by such rules and regulations.

(f) The corporation is authorized to prescribe forms and promulgate rules and regulations which it deems necessary to carry out the provisions of this article.

(g) The corporation and any claimant agency shall incur no civil or criminal liability for good faith adherence to the provisions of this Code section.

(h) The claimant agency shall pay the corporation for all costs incurred by the corporation in setting off debts in the manner provided in this article. (Code 1981, § 50-27-53, enacted by Ga. L. 1993, p. 1037, § 2; Ga. L. 2000, p. 1589, § 3.)

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provides that the amendment to this Code section is applicable with respect to notices delivered on or after July 1, 2000.

50-27-54. Information provided to claimant agency; confidentiality.

(a) Notwithstanding Code Section 50-27-29, which prohibits disclosure by the corporation of the contents of prize winner records or information, and notwithstanding any other confidentiality statute, the corporation may provide to a claimant agency all information necessary to accomplish and effectuate the intent of this article.

(b) The information obtained by a claimant agency from the corporation in accordance with this article shall retain its confidentiality and shall only be used by a claimant agency in the pursuit of its debt collection duties and practices. Any employee or prior employee of any claimant agency who unlawfully discloses any such information for any other purpose, except as otherwise specifically authorized by law, shall be subject to the same penalties specified by law for unauthorized disclosure of confidential information by an agent or employee of the corporation. (Code 1981, § 50-27-54, enacted by Ga. L. 1993, p. 1037, § 2.)

50-27-55. Article applicable to prizes of \$5,000.00 or more.

The provisions of this article shall only apply to prizes of \$5,000.00 or more and shall not apply to any retailers authorized by the board to pay prizes of up to \$5,000.00 after deducting the price of the ticket or share;

excepting that a claim for delinquent child support filed by the Child Support Enforcement Agency of the Department of Human Services shall apply to all prizes of \$2,500.00 or more. (Code 1981, § 50-27-55, enacted by Ga. L. 1993, p. 1037, § 2; Ga. L. 2006, p. 850, § 1/SB 419; Ga. L. 2009, p. 453, § 2-2/HB 228.)

The 2009 amendment, effective July 1, 2009, substituted "Department of Human Services" for "Department of Human Resources" near the end of this Code section.

Editor's notes. — Ga. L. 2006, p. 850, § 2,

not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2006, and shall apply to prizes awarded on or after that date."

CHAPTER 28

STATE PRODUCTIVITY COUNCIL

Sec.
50-28-1 through 50-28-5 [Repealed].

50-28-1 through 50-28-5.

Repealed by former Code Section 50-28-5 as enacted by Ga. L. 1994, p. 1844, § 1, effective July 1, 1996.

Editor's notes. — These Code sections through 50-28-5, enacted by Ga. L. 1994, p. 1844, § 1, were based on Code 1981, §§ 50-28-1 through 50-28-5.

CHAPTER 29

INFORMATION TECHNOLOGY

Sec.		Sec.	
50-29-1.	Georgia Technology Authority successor in interest to Georgia Information Technology Policy Council.		provision of services; fees; contract provisions.
		50-29-3 through 50-29-11	[Repealed].
50-29-2.	Authority of public agencies that maintain geographic information systems to contract for the	50-29-12.	Authorization for state agencies to establish pilot projects to serve as models for application of technology; reports.

50-29-1. Georgia Technology Authority successor in interest to Georgia Information Technology Policy Council.

The Georgia Technology Authority shall be the successor in interest to the Georgia Information Technology Policy Council created by Ga. L. 1995, p. 761, as amended, and all debts, obligations, and liabilities of said council shall become the debts, obligations, and liabilities of said authority. (Code 1981, § 50-29-1, enacted by Ga. L. 1995, p. 761, § 1; Ga. L. 2000, p. 249, § 13.)

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 280 (2000).

50-29-2. Authority of public agencies that maintain geographic information systems to contract for the provision of services; fees; contract provisions.

(a) Notwithstanding subsection (f) of Code Section 50-18-71 or Code Section 50-18-71.2, a county or municipality of the State of Georgia, a regional commission, or a local authority created by local or general law that has created or maintains a geographic information system in electronic form may contract to distribute, sell, provide access to, or otherwise market records or information maintained in such system and may license or establish fees for providing such records or information or providing access to such system.

(b) Any fees or license fees established pursuant to subsection (a) of this Code section shall be based upon the recovery of the actual development cost of creating or providing the geographic information system and upon the recovery of a reasonable portion of the costs associated with building and maintaining the geographic information system. The fees may include cost to the county, municipality, regional commission, or local authority of time, equipment, and personnel in the creation, purchase, development, production, or update of the geographic information system.

(c) Any contract authorized by subsection (a) of this Code section shall include provisions that:

- (1) Protect the security and integrity of the system;
- (2) Limit the liability of the county, municipality, regional commission, or local authority for providing the services and products;
- (3) Restrict the duplication and resale of the services and products provided; and
- (4) Ensure that the public is fairly and reasonably compensated for the records or information or access provided.

(d) A county, municipality, a regional commission, or local authority may contract with a private person or corporation to provide the geographic information system records or information or access to the system to members of the public as authorized by this Code section. (Code 1981, § 50-29-2, enacted by Ga. L. 2001, p. 804, § 1; Ga. L. 2008, p. 181, § 18/HB 1216.)

The 2008 amendment, effective July 1, 2009, substituted “regional commission” for “regional development center” throughout this Code section.

Editor’s notes. — Ga. L. 2000, p. 249, § 13, repealed former Code Section 50-29-2,

pertaining to legislative findings and intent in enacting the Information Technology Policy Act, effective July 1, 2000. The former Code section was based on Ga. L. 1995, p. 761, § 1.

50-29-3 through 50-29-11.

Reserved. Repealed by Ga. L. 2000, p. 249, § 13, effective July 1, 2000.

Editor’s notes. — Code Sections 50-29-3 through 50-29-11, relating to information technology policies, were based on Ga. L.

1995, p. 761, § 1; Ga. L. 1998, p. 232, § 4; Ga. L. 1998, p. 1157, § 1.

50-29-12. Authorization for state agencies to establish pilot projects to serve as models for application of technology; reports.

(a) The General Assembly desires to promote economic development and efficient delivery of government services by encouraging state governmental agencies and private sector entities to conduct their business and transactions using electronic media.

(b) All state agencies, authorities, and boards are authorized to establish pilot projects, which are to serve as models for the application of technology such as electronic signatures, through public and private partnerships with private companies providing such technology related services. Such pilot projects shall be approved by the Georgia Technology Authority. Such projects shall consider both commercial and government applications, be inclusive of major categories of electronic signature technology, and be established through a request for proposal process. The pilot projects are

intended to provide a proof of concept for the application of technology, such as electronic signatures, and to serve to educate the General Assembly and the public at large as to the benefits of electronic signatures as well as the role of state government in any future regulatory capacity. One such pilot project may involve digital signatures and the use of a public key infrastructure established by a service provider. Any private partner chosen for these pilot projects may establish user fees to pay for the cost of these services so that no state funds would be required.

(c) State agencies establishing pilot projects shall submit quarterly progress reports on such projects to the Georgia Technology Authority. The authority shall monitor the success of such pilot projects and provide technical assistance to the extent that resources of the authority are available. (Code 1981, § 50-29-12, enacted by Ga. L. 1997, p. 1052, § 3; Ga. L. 1998, p. 232, § 5; Ga. L. 1999, p. 322, § 1; Ga. L. 2000, p. 249, § 14; Ga. L. 2009, p. 133, § 5/HB 436.)

The 2009 amendment, effective April 21, 2009, deleted “, and the authority shall then submit such reports to the Electronic Commerce Study Committee” following “Authority” at the end of the first sentence of subsection (c).

Editor’s notes. — Former subsection (d), concerning the creation of the Electronic

Commerce Study Committee, was repealed by its own terms effective December 31, 2002.

Law reviews. — For article commenting on the enactment of this Code section, see 14 Georgia St. U. L. Rev. 25 (1997).

For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 280 (2000).

CHAPTER 30

INSTITUTE FOR COMMUNITY BUSINESS DEVELOPMENT

Sec.
50-30-1 through 50-30-6 [Repealed].

Code Commission notes. — Pursuant to 1995, p. 870, were redesignated as Code Sections 50-30-1 through 50-30-6, since Chapter 29 had already been enacted by Ga. L. 1995, p. 761.

50-30-1 through 50-30-6.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 11, effective May 14, 2008.

Code Commission notes. — The amendment of Code Section 50-30-4, by Ga. L. 2008, p. 181, § 24, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1015, § 11. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor’s notes. — This chapter was based on Code 1981, §§ 50-30-1 to 50-30-6, enacted by Ga. L. 1995, p. 870, § 1; Ga. L. 1998, p. 128, § 50.

CHAPTER 31**GEORGIA SUGGESTION SYSTEM**

50-31-1 through 50-31-7.

Reserved. Repealed by Ga. L. 2001, p. 873, § 27, effective July 1, 2001.

Editor's notes. — This chapter, consisting of Code Sections 50-31-1 through 50-31-7, concerning the Georgia Suggestion System, was repealed prior to becoming effective and was based on Ga. L. 1996, p. 1647, § 1; Ga. L. 1997, p. 533, § 1.

CHAPTER 32

GEORGIA REGIONAL TRANSPORTATION AUTHORITY

Article 1

General Provisions

- Sec.
50-32-1. Short title.
50-32-2. Definitions.
50-32-3. Creation of authority and board; quorum; vacancies.
50-32-4. Membership; terms; appointment; expenses; removal; applicability of Chapter 10 of Title 45; meetings; voting; assignment.

Article 2

Jurisdiction

- 50-32-10. Purpose of authority.
50-32-11. Powers of authority generally.
50-32-12. Creation and activation of special districts.
50-32-13. Governor's power to delegate.
50-32-14. Expenditure of state or federal funds.
50-32-15. Issuance of bonds.
50-32-16. Utilization of appropriated funds.
50-32-17. Power of eminent domain.
50-32-18. Rights of authority.
50-32-19. Liability of authority.
50-32-20. Access to all books, records, and other information resources; assistance of personnel; use of facilities, vehicles, aircraft, and other equipment.

Article 3

Funding

- 50-32-30. Funding resources.
50-32-31. Revenue bonds.
50-32-32. Guaranteed revenue bonds.
50-32-33. Bonds are made securities.
50-32-34. Pledge by the state.
50-32-35. Applicability of Chapter 5 of Title 10.

Sec.

- 50-32-36. State immune from obligations or indebtedness created by authority.
50-32-37. Legislative findings; bonds, notes, or other obligations issued by the authority exempt from taxation.
50-32-38. Issuance of bonds or other obligations subject to approval of commission.
50-32-39. Limitation of indebtedness.

Article 4

Local Government Services

- 50-32-50. Local government services approval and funding.
50-32-51. Lease agreements.
50-32-52. Grants or loans to local government.
50-32-53. Effect of failure to implement local government services on state and federal grants.
50-32-54. Failure of local government to collect and remit amounts due to authority.

Article 5

Allocation of Funds by Department of Transportation

- 50-32-60. Department of Transportation's allocation of funds unaltered.

Article 6

Construction of Chapter

- 50-32-70. Chapter to be liberally construed.
50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations.

Code Commission notes. — Ga. L. 1999, p. 112, § 7, enacted this chapter; however, Ga. L. 1999, p. 161, § 1, also enacted a chapter originally designated as this chapter

which was redesignated as Chapter 33 of Title 50.

Law reviews. — For note on 1999 enactment of this chapter, see 16 Ga. St. U.L. Rev. 233 (1999).

For comment, “Hamlets: Expanding the Fair Share Doctrine Under Strict Home Rule Constitutions,” see 49 Emory L.J. 255 (2000).

ARTICLE 1

GENERAL PROVISIONS

Law reviews. — Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Trans-

portation Authority, see 36 Ga. L. Rev. 247 (2001).

50-32-1. Short title.

This chapter shall be known and may be cited as the “Georgia Regional Transportation Authority Act.” (Code 1981, § 50-32-1, enacted by Ga. L. 1999, p. 112, § 7.)

JUDICIAL DECISIONS

Garbage collection fees. — There was no merit in a resident’s arguments that the provision in a contract in which a county agreed to reimburse a private enterprise for a percentage of uncollected fees for garbage collection services prior to the county’s re-

covery of those fees from residents by means provided by O.C.G.A. § 12-8-39.3 violated O.C.G.A. § 50-32-1 et seq. *Strykr v. Long County Bd. of Comm’rs*, 277 Ga. 624, 593 S.E.2d 348 (2004).

50-32-2. Definitions.

As used in this chapter, the term:

(1) “Authority” means the Georgia Regional Transportation Authority.

(2) “Bond” includes any revenue bond, bond, note, or other obligation.

(3) “Clean Air Act” means the federal Clean Air Act, as amended in 1990 and codified at 42 U.S.C.A. Sections 7401 to 7671q.

(4) “Cost of project” or “cost of any project” means:

(A) All costs of acquisition, by purchase or otherwise, construction, assembly, installation, modification, renovation, extension, rehabilitation, operation, or maintenance incurred in connection with any project, facility, or undertaking of the authority or any part thereof;

(B) All costs of real property or rights in property, fixtures, or personal property used in or in connection with or necessary for any project, facility, or undertaking of the authority or for any facilities

related thereto, including but not limited to the cost of all land, interests in land, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates; the cost of securing any such franchises, permits, approvals, licenses, or certificates; the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in or in connection with or necessary for any project, facility, or undertaking of the authority;

(C) All financing charges, bond insurance or other credit enhancement fee, and loan or loan guarantee fees and all interest on revenue bonds, notes, or other obligations of the authority which accrue or are paid prior to and during the period of construction of a project, facility, or undertaking of the authority and during such additional period as the authority may reasonably determine to be necessary to place such project, facility, or undertaking of the authority in operation;

(D) All costs of engineering, surveying, planning, environmental assessments, financial analyses, and architectural, legal, and accounting services and all expenses incurred by engineers, surveyors, planners, environmental scientists, fiscal analysts, architects, attorneys, accountants, and any other necessary technical personnel in connection with any project, facility, or undertaking of the authority or the issuance of any bonds, notes, or other obligations for such project, facility, or undertaking;

(E) All expenses for inspection of any project, facility, or undertaking of the authority;

(F) All fees of fiscal agents, paying agents, and trustees for bond owners under any bond resolution, trust agreement, indenture of trust, or similar instrument or agreement; all expenses incurred by any such fiscal agents, paying agents, bond registrar, and trustees; and all other costs and expenses incurred relative to the issuance of any bonds, revenue bonds, notes, or other obligations for any project, facility, or undertaking of the authority, including bond insurance or credit enhancement fee;

(G) All fees of any type charged by the authority in connection with any project, facility, or undertaking of the authority;

(H) All expenses of or incidental to determining the feasibility or practicability of any project, facility, or undertaking of the authority;

(I) All costs of plans and specifications for any project, facility, or undertaking of the authority;

(J) All costs of title insurance and examinations of title with respect to any project, facility, or undertaking of the authority;

(K) Repayment of any loans for the advance payment of any part of any of the foregoing costs, including interest thereon and any other expenses of such loans;

(L) Administrative expenses of the authority and such other expenses as may be necessary or incidental to any project, facility, or undertaking of the authority or the financing thereof or the placing of any project, facility, or undertaking of the authority in operation; and

(M) The establishment of a fund or funds for the creation of a debt service reserve, a renewal and replacement reserve, or such other funds or reserves as the authority may approve with respect to the financing and operation of any project, facility, or undertaking of the authority and as may be authorized by any bond resolution, trust agreement, indenture, or trust or similar instrument or agreement pursuant to the provisions of which the issuance of any revenue bonds, notes, or other obligations of the authority may be authorized.

Any cost, obligation, or expense incurred for any of the purposes specified in this paragraph shall be a part of the cost of the project, facility, or undertaking of the authority and may be paid or reimbursed as such out of the proceeds of revenue bonds, notes, or other obligations issued by the authority or as otherwise authorized by this chapter.

(5) "County" means any county created under the Constitution or laws of this state.

(6) "Facility" shall have the same meaning as "project."

(7) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "May" means permission and not command.

(9) "Metropolitan planning organization" means the forum for cooperative transportation decision making for a metropolitan planning area.

(10) "Metropolitan transportation plan" means the official intermodal transportation plan that is developed and adopted through the metropolitan transportation planning process for a metropolitan planning area.

(11) "Municipal corporation" or "municipality" means any city or town in this state.

(12) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the authority, the state, or local governments which is authorized to be issued under this chapter or under the Constitution or other laws of this state, including refunding bonds.

(13) “Office of profit or trust under the state” means any office created by or under the provisions of the Constitution, but does not include elected officials of county or local governments.

(14) “Project” means the acquisition, construction, installation, modification, renovation, repair, extension, renewal, replacement, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, repair, extension, renewal, replacement, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of providing facilities and services to meet land public transportation needs and environmental standards and to aid in the accomplishment of the purposes of the authority.

(15) “Revenue bond” includes any bond, note, or other obligation payable from revenues derived from any project, facility, or undertaking of the authority.

(16) “State implementation plan” means the portion or portions of an applicable implementation plan approved or promulgated, or the most recent revision thereof, under Sections 110, 301(d), and 175A of the Clean Air Act.

(17) “State-wide transportation improvement program” means a staged, multiyear, state-wide, intermodal program defined in 23 C.F.R. Section 450.104 which contains transportation projects consistent with the state-wide transportation plan and planning processes and metropolitan plans, transportation improvement programs, and processes.

(18) “State-wide transportation plan” means the official state-wide, intermodal transportation plan as defined in 23 C.F.R. Section 450.104 that is developed through the state-wide transportation planning process.

(19) “Transportation improvement program” means a staged, multiyear, intermodal program as defined in 23 C.F.R. Section 450.104 and consisting of transportation projects which is consistent with the metropolitan transportation plan.

(20) “Undertaking” shall have the same meaning as “project.” (Code 1981, § 50-32-2, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in this Code section.

50-32-3. Creation of authority and board; quorum; vacancies.

(a) There is created the Georgia Regional Transportation Authority as a body corporate and politic, which shall be deemed an instrumentality of the State of Georgia and a public corporation thereof, for purposes of managing or causing to be managed land transportation and air quality within certain areas of this state; and by that name, style, and title such body may contract and be contracted with and bring and defend actions in all courts of this state.

(b) The management of the business and affairs of the authority shall be vested in a board of directors, subject to the provisions of this chapter and to the provisions of bylaws adopted by the board as authorized by this chapter. The board of directors shall make bylaws governing its own operation and shall have the power to make bylaws, rules, and regulations for the government of the authority and the operation, management, and maintenance of such projects as the board may determine appropriate to undertake from time to time.

(c) Except as otherwise provided in this chapter, a majority of the members of the board then in office shall constitute a quorum for the transaction of business. The vote of a majority of the members of the board present at the time of the vote, if a quorum is present at such time, shall be the act of the board unless the vote of a greater number is required by law or by the bylaws of the board of directors. The board of directors, by resolution adopted by a majority of the full board of directors, shall designate from among its members an executive committee and one or more other committees, each consisting of two or more members of the board, which shall have and exercise such authority as the board may delegate to it under such procedures as the board may direct by resolution establishing such committee or committees.

(d) No vacancy on the authority shall impair the right of a majority of the appointed members from exercising all rights and performing all duties of the authority. The authority shall have perpetual existence. Any change in the name or composition of the authority shall in no way affect the vested rights of any person under this chapter or impair the obligations of any contracts existing under this chapter. (Code 1981, § 50-32-3, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-4. Membership; terms; appointment; expenses; removal; applicability of Chapter 10 of Title 45; meetings; voting; assignment.

(a) The initial board of directors of the authority shall consist of 15 members. All members of the board and their successors shall be appointed for terms of five years each, except that the initial terms for eight members of the board appointed in 1999 shall be three years each; and the particular

beginning and ending dates of such terms shall be specified by the Governor. All members of the board shall be appointed by the Governor of the State of Georgia and shall serve until the appointment and qualification of a successor, the provisions of subsection (b) of Code Section 45-12-52 to the contrary notwithstanding; except as otherwise provided in this Code section. Said members shall be appointed so as to reasonably reflect the characteristics of the general public within the jurisdiction or potential jurisdiction of the authority, subject to the provisions of subsection (d) of this Code section. No person holding any other office of profit or trust under the state shall be appointed to membership. The chair of the board of directors shall be appointed and designated by the Governor.

(b) All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. A person appointed to fill a vacancy shall serve for the unexpired term. No vacancy on the board shall impair the right of the quorum of the remaining members then in office to exercise all rights and perform all duties of the board.

(c) The members of the board of directors shall be entitled to and shall be reimbursed for their actual travel expenses necessarily incurred in the performance of their duties and, for each day actually spent in the performance of their duties, shall receive the same per diem as do members of the General Assembly.

(d) Members of the board of directors may be removed by executive order of the Governor for misfeasance, malfeasance, nonfeasance, failure to attend three successive meetings of the board without good and sufficient cause, abstention from voting unless authorized under subsection (g) of this Code section, or upon a finding of a violation of Code Section 45-10-3 pursuant to the procedures applicable to that Code section. A violation of Code Section 45-10-3 may also subject a member to the penalties provided in subparagraphs (a)(1)(A), (a)(1)(B), and (a)(1)(C) of Code Section 45-10-28, pursuant to subsection (b) of Code Section 45-10-28. In the event that a vacancy or vacancies on the board render the board able to obtain a quorum but unable to obtain the attendance of a number of members sufficient to constitute such supermajorities as may be required by this chapter, the board shall entertain no motion or measure requiring such a supermajority until a number of members sufficient to constitute such supermajority is present, and the Governor shall be immediately notified of the absence of members.

(e) The members of the authority shall be subject to the applicable provisions of Chapter 10 of Title 45, including without limitation Code Sections 45-10-3 through 45-10-5. Members of the authority shall be public officers who are members of a state board for purposes of the financial disclosure requirements of Article 3 of Chapter 5 of Title 21. The members of the authority shall be accountable in all respects as trustees. The

authority shall keep suitable books and records of all actions and transactions and shall submit such books together with a statement of the authority's financial position to the state auditor on or about the close of the state's fiscal year. The books and records shall be inspected and audited by the state auditor at least once in each year.

(f) Meetings of the board of directors, regular or special, shall be held at the time and place fixed by or under the bylaws, with no less than five days' public notice for regular meetings as prescribed in the bylaws, and such notice as the bylaws may prescribe for special meetings. Each member shall be given written notice of all meetings as prescribed in the bylaws. Meetings of the board may be called by the chairperson or by such other person or persons as the bylaws may authorize. Notice of any regular or special meeting shall be given to the Governor at least five days prior to such meeting, unless the Governor waives such notice requirement, and no business may be transacted at any meeting of the board unless and until the Governor has acknowledged receipt of or waived such notice.

(g) All meetings of the board of directors shall be subject to the provisions of Chapter 14 of this title. A written record of each vote taken by the board, specifying the yea or nay vote or absence of each member as to each measure, shall be transmitted promptly to the Governor upon the adjournment of each meeting. No member may abstain from a vote other than for reasons constituting disqualification to the satisfaction of a majority of a quorum of the board on a record vote.

(h) The authority is assigned to the Department of Community Affairs for administrative purposes only. (Code 1981, § 50-32-4, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2002, p. 415, § 50.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, "render" was substituted for "renders" in subsection (d).

ARTICLE 2

JURISDICTION

Law reviews. — For note, "Standards for Transportation Authority," see 36 Ga. L. Rev. 247 (2001).
Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional

50-32-10. Purpose of authority.

(a)(1) This chapter shall operate uniformly throughout the state.

(2)(A) The initial jurisdiction of the authority for purposes of this chapter shall encompass the territory of every county which was designated by the United States Environmental Protection Agency (USEPA) in the *Code of Federal Regulations* as of December 31, 1998, as

a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter.

(B) The jurisdiction of the authority for purposes of this chapter shall also encompass the territory of every county designated by the USEPA in the *Code of Federal Regulations* after December 31, 1998, as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone, carbon monoxide, or particulate matter, provided that the jurisdictional area encompassed under this subparagraph shall be contiguous with the jurisdictional area encompassed under subparagraph (A) of this paragraph.

(b)(1) Within three months of May 6, 1999, the director of the Environmental Protection Division shall report and certify to the authority and the Governor, pursuant to criteria established by that division, counties which are reasonably expected to become nonattainment areas under the Clean Air Act within seven years from the date of such report and certification, and shall update such report and certification every six months thereafter. Within the geographic territory of any county so designated, the board shall provide, by resolution or regulation, that the funding, planning, design, construction, contracting, leasing, and other related facilities of the authority shall be made available to county and local governments for the purpose of planning, designing, constructing, operating, and maintaining land public transportation systems and other land transportation projects, air quality installations, and all facilities necessary and beneficial thereto, and for the purpose of designing and implementing designated metropolitan planning organizations' land transportation plans and transportation improvement programs, on such terms and conditions as may be agreed to between the authority and such county or local governments.

(2) By resolution of the county governing authority, the special district created by this chapter encompassing the territory of any county reported and certified pursuant to paragraph (1) of this subsection may be activated for the purposes of this chapter, or such county may be brought within the jurisdiction of the authority by resolution of the governing authority.

(3) The jurisdiction of the authority for purposes of this chapter shall be extended to the territory of any county the territory of which is not contiguous with the jurisdiction established by subsection (a) of this Code section which is designated by the USEPA in the *Code of Federal Regulations* as a county included in whole or in part within a nonattainment area under the Clean Air Act and which the board designates, through regulation, as a county having excess levels of ozone,

carbon monoxide, or particulate matter. Upon any such county or self-contiguous group of counties coming within the jurisdiction of the authority, a single member who shall reside within such additional territory shall be added to the board, together with an additional member, who may reside inside or outside such additional territory, for each 200,000 persons above the number of 200,000 persons forming the population of such additional territory according to the 1990 United States decennial census or any future such census.

(c) Upon acquiring jurisdiction over the territory of any county, the authority's jurisdiction over such territory shall continue until 20 years have elapsed since the later of the date such county was redesignated by the USEPA as in attainment under the Clean Air Act or such designation by the USEPA is no longer made.

(d)(1) Upon the lapse of the authority's jurisdiction over a geographic area pursuant to the provisions of this Code section, the authority shall have the power to enter into such contracts, lease agreements, and other instruments necessary or convenient to manage and dispose of real property and facilities owned or operated by the authority within such geographic area, and shall dispose of all such property not more than five years after the lapse of such jurisdiction, but shall retain jurisdiction for the purpose of operating and managing such property and facilities until their final disposition.

(2) The provisions of this subsection shall be implemented consistent with the terms of such contracts, lease agreements, or other instruments or agreements as may be necessary or required to protect federal interests in assets purchased, leased, or constructed utilizing federal funding in whole or in part, and the authority is empowered to enter into such contracts, lease agreements, or other instruments or agreements with appropriate federal agencies or other representatives or instrumentalities of the federal government from time to time as necessary to achieve the purposes of this chapter and the protection of federal interests.

(e) Except for the purpose of reviewing proposed regional transportation plans and transportation improvement programs prepared by metropolitan planning organizations in accordance with requirements specifically placed upon the Governor by federal law, the jurisdiction of the authority shall not extend to the territory and facilities of any airport as defined in Code Section 6-3-20.1 and which is certified under 14 C.F.R. Part 139. In no event shall the authority have jurisdiction to design, construct, repair, improve, expand, own, maintain, or operate any such airport or any facilities of such airport. (Code 1981, § 50-32-10, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2006, p. 72, § 50/SB 465.)

Code Commission notes. — Pursuant to 1999,” was substituted for “of the effective Code Section 28-9-5, in 1999, “of May 6, date of this chapter” in paragraph (b)(1).

50-32-11. Powers of authority generally.

(a) The authority shall have the following general powers:

(1) To sue and be sued in all courts of this state, the original jurisdiction and venue of any such action being the superior court of any county wherein a substantial part of the business was transacted, the tortious act, omission, or injury occurred, or the real property is located, except that venue and jurisdiction for bond validation proceedings shall be as provided by paragraph (9) of subsection (e) of Code Section 50-32-31;

(2) To have a seal and alter the same at its pleasure;

(3) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained land public transportation systems and other land transportation projects, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction or which are included within an approved transportation plan or transportation improvement program and provide land public transportation services within the geographic jurisdiction of the authority, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes, and to enter into contracts and agreements with the Georgia Department of Transportation, county and local governments, and transit system operators for those purposes;

(4) To plan, design, acquire, construct, add to, extend, improve, equip, operate, and maintain or cause to be operated and maintained air quality control installations, and all facilities and appurtenances necessary or beneficial thereto, within the geographic area over which the authority has jurisdiction for such purposes pursuant to this chapter, and to contract with any state, regional, or local government, authority, or department, or with any private person, firm, or corporation, for those purposes; provided, however, that where such air quality control measures are included in an applicable implementation plan, they shall be approved by the Environmental Protection Division of the state Department of Natural Resources and by the United States Environmental Protection Agency where necessary to preserve their protected status during any conformity lapse;

(5) To make and execute contracts, lease agreements, and all other instruments necessary or convenient to exercise the powers of the authority or to further the public purpose for which the authority is created, such contracts, leases, or instruments to include contracts for acquisition, construction, operation, management, or maintenance of projects and facilities owned by local government, the authority, or by the

state or any political subdivision, department, agency, or authority thereof, and to include contracts relating to the execution of the powers of the authority and the disposal of the property of the authority from time to time; and any and all local governments, departments, institutions, authorities, or agencies of the state are authorized to enter into contracts, leases, agreements, or other instruments with the authority upon such terms and to transfer real and personal property to the authority for such consideration and for such purposes as they deem advisable;

(6) To acquire by purchase, lease, or otherwise and to hold, lease, and dispose of real or personal property of every kind and character, or any interest therein, in furtherance of the public purpose of the authority, in compliance, where required, with applicable federal law including without limitation the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. Section 4601, et seq., 23 C.F.R. Section 1.23, and 23 C.F.R. Section 713(c);

(7) To appoint an executive director who shall be executive officer and administrative head of the authority. The executive director shall be appointed and serve at the pleasure of the authority. The executive director shall hire officers, agents, and employees, prescribe their duties and qualifications and fix their compensation, and perform such other duties as may be prescribed by the authority. Such officers, agents, and employees shall serve at the pleasure of the executive director;

(8) To finance projects, facilities, and undertakings of the authority for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction by loan, loan guarantee, grant, lease, or otherwise, and to pay the cost of such from the proceeds of bonds, revenue bonds, notes, or other obligations of the authority or any other funds of the authority or from any contributions or loans by persons, corporations, partnerships, whether limited or general, or other entities, all of which the authority is authorized to receive, accept, and use;

(9) To extend credit or make loans or grants for all or part of the cost or expense of any project, facility, or undertaking of a political subdivision or other entity for the furtherance of the purposes of the authority within the geographic area over which the authority has jurisdiction upon such terms and conditions as the authority may deem necessary or desirable; and to adopt rules, regulations, and procedures for making such loans and grants;

(10) To borrow money to further or carry out its public purpose and to issue guaranteed revenue bonds, revenue bonds, notes, or other obligations to evidence such loans and to execute leases, trust indentures, trust agreements for the sale of its revenue bonds, notes, or other

obligations, loan agreements, mortgages, deeds to secure debt, trust deeds, security agreements, assignments, and such other agreements or instruments as may be necessary or desirable in the judgment of the authority, and to evidence and to provide security for such loans;

(11) To issue guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations of the authority, to receive payments from the Department of Community Affairs, and to use the proceeds thereof for the purpose of:

(A) Paying or loaning the proceeds thereof to pay, all or any part of, the cost of any project or the principal of and premium, if any, and interest on the revenue bonds, bonds, notes, or other obligations of any local government issued for the purpose of paying in whole or in part the cost of any project and having a final maturity not exceeding three years from the date of original issuance thereof;

(B) Paying all costs of the authority incidental to, or necessary and appropriate to, furthering or carrying out the purposes of the authority; and

(C) Paying all costs of the authority incurred in connection with the issuance of the guaranteed revenue bonds, revenue bonds, bonds, notes, or other obligations;

(12) To collect fees and charges in connection with its loans, commitments, management services, and servicing including, but not limited to, reimbursements of costs of financing, as the authority shall determine to be reasonable and as shall be approved by the authority;

(13) Subject to any agreement with bond owners, to invest moneys of the authority not required for immediate use to carry out the purposes of this chapter, including the proceeds from the sale of any bonds and any moneys held in reserve funds, in obligations which shall be limited to the following:

(A) Bonds or other obligations of the state or bonds or other obligations, the principal and interest of which are guaranteed by the state;

(B) Bonds or other obligations of the United States or of subsidiary corporations of the United States government fully guaranteed by such government;

(C) Obligations of agencies of the United States government issued by the Federal Land Bank, the Federal Home Loan Bank, the Federal Intermediate Credit Bank, and the Bank for Cooperatives;

(D) Bonds or other obligations issued by any public housing agency or municipality in the United States, which bonds or obligations are fully secured as to the payment of both principal and interest by a

pledge of annual contributions under an annual contributions contract or contracts with the United States government, or project notes issued by any public housing agency, urban renewal agency, or municipality in the United States and fully secured as to payment of both principal and interest by a requisition, loan, or payment agreement with the United States government;

(E) Certificates of deposit of national or state banks or federal savings and loan associations located within the state which have deposits insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation and certificates of deposit of state building and loan associations located within the state which have deposits insured by any Georgia deposit insurance corporation, including the certificates of deposit of any bank, savings and loan association, or building and loan association acting as depository, custodian, or trustee for any such bond proceeds; provided, however, that the portion of such certificates of deposit in excess of the amount insured by the Federal Deposit Insurance Corporation or any Georgia deposit insurance corporation, if any such excess exists, shall be secured by deposit with the Federal Reserve Bank of Atlanta, Georgia, or with any national or state bank located within the state, of one or more of the following securities in an aggregate principal amount equal at least to the amount of such excess:

(i) Direct and general obligations of the state or of any county or municipality in the state;

(ii) Obligations of the United States or subsidiary corporations included in subparagraph (B) of this paragraph;

(iii) Obligations of agencies of the United States government included in subparagraph (C) of this paragraph; or

(iv) Bonds, obligations, or project notes of public housing agencies, urban renewal agencies, or municipalities included in subparagraph (D) of this paragraph;

(F) Interest-bearing time deposits, repurchase agreements, reverse repurchase agreements, rate guarantee agreements, or other similar banking arrangements with a bank or trust company having capital and surplus aggregating at least \$50 million or with any government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York having capital aggregating at least \$50 million or with any corporation which is subject to registration with the Board of Governors of the Federal Reserve System pursuant to the requirements of the Bank Holding Company Act of 1956, provided that each such interest-bearing time deposit, repurchase agreement, reverse repurchase agreement, rate guarantee agreement, or other similar banking arrangement shall permit the moneys so placed to be

available for use at the time provided with respect to the investment or reinvestment of such moneys; and

(G) State operated investment pools;

(14) To acquire or contract to acquire from any person, firm, corporation, local government, federal or state agency, or corporation by grant, purchase, or otherwise, leaseholds, real or personal property, or any interest therein; and to sell, assign, exchange, transfer, convey, lease, mortgage, or otherwise dispose of or encumber the same; and local government is authorized to grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the authority;

(15) Subject to applicable covenants or agreements related to the issuance of bonds, to invest any moneys held in debt service funds or sinking funds not restricted as to investment by the Constitution or laws of this state or the federal government or by contract not required for immediate use or disbursement in obligations of the types specified in paragraph (13) of this subsection, provided that, for the purposes of this paragraph, the amounts and maturities of such obligations shall be based upon and correlated to the debt service, which debt service shall be the principal installments and interest payments, schedule for which such moneys are to be applied;

(16) To provide advisory, technical, consultative, training, educational, and project assistance services to the state and local government and to enter into contracts with the state and local government to provide such services. The state and local governments are authorized to enter into contracts with the authority for such services and to pay for such services as may be provided them;

(17) To make loan commitments and loans to local governments and to enter into option arrangements with local governments for the purchase of said bonds, revenue bonds, notes, or other obligations;

(18) To sell or pledge any bonds, revenue bonds, notes, or other obligations acquired by it whenever it is determined by the authority that the sale thereof is desirable;

(19) To apply for and to accept any gifts or grants or loan guarantees or loans of funds or property or financial or other aid in any form from the federal government or any agency or instrumentality thereof, or from the state or any agency or instrumentality thereof, or from any other source for any or all of the purposes specified in this chapter and to comply, subject to the provisions of this chapter, with the terms and conditions thereof;

(20) To lease to local governments any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state;

(21) To contract with state agencies or any local government for the use by the authority of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the authority and such state agencies and local governments are authorized to enter into such contracts;

(22) To extend credit or make loans, including the acquisition of bonds, revenue bonds, notes, or other obligations of the state, any local government, or other entity, including the federal government, for the cost or expense of any project or any part of the cost or expense of any project, which credit or loans may be evidenced or secured by trust indentures, loan agreements, notes, mortgages, deeds to secure debt, trust deeds, security agreements, or assignments, on such terms and conditions as the authority shall determine to be reasonable in connection with such extension of credit or loans, including provision for the establishment and maintenance of reserve funds; and, in the exercise of powers granted by this chapter in connection with any project, the authority shall have the right and power to require the inclusion in any such trust indentures, loan agreement, note, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other instrument such provisions or requirements for guaranty of any obligations, insurance, construction, use, operation, maintenance, and financing of a project and such other terms and conditions as the authority may deem necessary or desirable;

(23) As security for repayment of any bonds, revenue bonds, notes, or other obligations of the authority, to pledge, lease, mortgage, convey, assign, hypothecate, or otherwise encumber any property of the authority including, but not limited to, real property, fixtures, personal property, and revenues or other funds and to execute any lease, trust indenture, trust agreement, agreement for the sale of the authority's revenue bonds, notes or other obligations, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such revenue bonds, notes, or other obligations, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument;

(24) To receive and use the proceeds of any tax levied to pay all or any part of the cost of any project or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(25) To use income earned on any investment for such corporate purposes of the authority as the authority in its discretion shall deter-

mine, including, but not limited to, the use of repaid principal and earnings on funds, the ultimate source of which was an appropriation to a budget unit of the state to make loans for projects;

(26) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local government; with other states and their political subdivisions; and with joint agencies thereof and such state agencies, local government, and joint agencies are authorized and empowered to cooperate and act in conjunction, and to enter into contracts or agreements with the authority and local government to achieve or further the purposes of the authority;

(27) To coordinate, cooperate, and contract with any metropolitan planning organization for a standard metropolitan statistical area which is primarily located within an adjoining state but which includes any territory within the jurisdiction of the authority to achieve or further the purposes of the authority as provided by this chapter;

(28) To coordinate and assist in planning for land transportation and air quality purposes within the geographic area over which the authority has jurisdiction pursuant to this chapter, between and among all state, regional, and local authorities charged with planning responsibilities for such purposes by state or federal law, and to adopt a regional plan or plans based in whole or in part on such planning;

(29) Reserved;

(30) To review and make recommendations to the Governor concerning all land transportation plans and transportation improvement programs prepared by the Department of Transportation involving design, construction, or operation of land transportation facilities wholly or partly within the geographic area over which the authority has jurisdiction pursuant to this chapter, and to negotiate with that department concerning changes or amendments to such plans which may be recommended by the authority or the Governor consistent with applicable federal law and regulation, and to adopt such plans as all or a portion of its own regional plans;

(31) To acquire by the exercise of the power of eminent domain any real property or rights in property which it may deem necessary for its purposes under this chapter pursuant to the procedures set forth in this chapter, and to purchase, exchange, sell, lease, or otherwise acquire or dispose of any property or any rights or interests therein for the purposes authorized by this chapter or for any facilities or activities incident thereto, subject to and in conformity with applicable federal law and regulation;

(32) To the extent permissible under federal law, to operate as a receiver of federal grants, loans, and other moneys intended to be used

within the geographic area over which the authority has jurisdiction pursuant to this chapter for inter-urban and intra-urban transit, land public transportation development, air quality and air pollution control, and other purposes related to the alleviation of congestion and air pollution;

(33) Subject to any covenant or agreement made for the benefit of owners of bonds, notes, or other obligations issued to finance roads or toll roads, in planning for the use of any road or toll road which lies within the geographical area over which the authority has jurisdiction, the authority shall have the power to control or limit access thereto, including the power to close off, regulate, or create access to or from any part, excluding the interstate system, of any road on the state highway system, a county road system, or a municipal street system to or from any such road or toll road or any property or project of the authority, to the extent necessary to achieve the purposes of the authority; the authority may submit an application for an interstate system right of way encroachment through the state Department of Transportation, and that department shall submit the same to the Federal Highway Administration for approval. The authority shall provide any affected local government with not less than 60 days' notice of any proposed access limitation;

(34) To exercise any power granted by the laws of this state to public or private corporations which is not in conflict with the public purpose of the authority;

(35) To do all things necessary or convenient to carry out the powers conferred by this chapter;

(36) To procure insurance against any loss in connection with its property and other assets or obligations or to establish cash reserves to enable it to act as self-insurer against any and all such losses;

(37) To accept and use federal funds; to enter into any contracts or agreements with the United States or its agencies or subdivisions relating to the planning, financing, construction, improvement, operation, and maintenance of any public road or other mode or system of land transportation; and to do all things necessary, proper, or expedient to achieve compliance with the provisions and requirements of all applicable federal-aid acts and programs. Nothing in this chapter is intended to conflict with any federal law; and, in case of such conflict, such portion as may be in conflict with such federal law is declared of no effect to the extent of the conflict;

(38) To ensure that any project funded by the authority in whole or in part with federal-aid funds is included in approved transportation improvement programs adopted and approved by designated metropolitan planning organizations and the Governor and in the land transportation plan adopted and approved by the designated metropolitan

planning organization, and is in compliance with the requirements of relevant portions of the regulations implementing the Clean Air Act including without limitation 40 C.F.R. Section 93.105(c)(1)(ii) and 40 C.F.R. Section 93.122(a)(1), where such inclusion, approval, designation, or compliance is required by applicable federal law or regulation; and

(39) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation.

(b) In addition to the above-enumerated general powers, and such other powers as are set forth in this chapter, the authority shall have the following powers with respect to special districts created and activated pursuant to this chapter:

(1) By resolution, to authorize the provision of land public transportation services and the institution of air quality control measures within the bounds of such special districts by local governments within such special districts utilizing the funding methods authorized by this chapter where the facilities for such purposes are located wholly within the jurisdiction of such local governments and such special districts or are the subject of contracts between or among such local governments and where such services and measures are certified by the authority to be consistent with the designated metropolitan planning organizations' regional plans, where applicable;

(2) By resolution, to authorize the utilization by local governments within such special districts of the funding mechanisms enumerated in Code Section 50-32-30 to provide funding to defray the cost of land public transportation and air quality control measures certified and provided pursuant to paragraph (1) of this subsection;

(3) By resolution, to authorize the utilization by local governments within such special districts of the above-enumerated funding mechanisms to assist in funding those portions of regional land public transportation systems which lie within and provide service to the territory of such local governments within special districts; and

(4) By resolution, to contract with local governments within such special districts for funding, planning services, and such other services as the authority may deem necessary and proper to assist such local governments in providing land public transportation services and instituting air quality control measures within the bounds of such special districts where the facilities for such purposes are located wholly within the jurisdiction of such local governments and such special districts or are the subject of contracts between or among such local governments, and where such services and measures are certified by the authority to be consistent with the designated metropolitan planning organizations' regional plans, where applicable.

(c) The provision of local government services and the utilization of funding mechanisms therefor consistent with the terms of this chapter shall not be subject to the provisions of Chapter 70 of Title 36; provided, however, that the authority shall, where practicable, provide for coordination and consistency between the provision of such services pursuant to the terms of this chapter and the provision of such services pursuant to Chapter 70 of Title 36. (Code 1981, § 50-32-11, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2002, p. 415, § 50; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 976, § 13/SB 200.)

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, revised language and punctuation in subsection (a). The second 2009 amendment, effective May 11, 2009, substituted “Reserved;” for the former provisions of paragraph (a)(29), which read: “To review and make recommendations to the Governor concerning all proposed regional land transportation plans and transportation improvement programs prepared by metropolitan planning organizations wholly or partly within the geographic area over which the

authority has jurisdiction pursuant to this chapter, and to negotiate with such metropolitan planning organizations concerning changes or amendments to such plans which may be recommended by the authority or the Governor consistent with applicable federal law and regulation, and to adopt such regional plans as all or a portion of its own regional plans;”.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “provision” was substituted for “provisions” in subsection (c).

50-32-12. Creation and activation of special districts.

Pursuant to the authority granted by Article IX, Section II, Paragraph VI of the Constitution of this state, there are created within this state 159 special districts. One such district shall exist within the geographic boundaries of each county, and the territory of each district shall include all of the territory within its respective county. Any special district within a county within the geographic area over which the authority has jurisdiction shall be deemed activated for purposes of this chapter. (Code 1981, § 50-32-12, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-13. Governor’s power to delegate.

(a) The Governor may delegate to the authority, by executive order, his or her powers under applicable federal transportation planning and air quality laws and regulations, including without limitation the power to resolve revision disputes between metropolitan planning organizations and the Department of Transportation under 40 C.F.R. Section 93.105, the power to approve state-wide transportation improvement programs under 23 U.S.C. Section 134 and 23 C.F.R. Sections 450.312(b), 450.324(b), and 450.328(a), and the power of approval and responsibilities for public involvement under 23 C.F.R. Section 450.216(a).

(b) In exercising the authority’s delegated powers concerning proposed state-wide transportation plans and transportation improvement programs

prepared by metropolitan planning organizations wholly or partly within the geographic area over which the authority has jurisdiction or by the Department of Transportation:

(1) Transportation plans and transportation improvement programs subject to the authority's delegated review powers shall be approved by the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

(2) The authority may request modification of such a plan or program and approve such proposal for modification of a plan or program by the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

(3) The board may set a date certain as a deadline for submission of any such plan or program to the authority for review; and

(4) If any such plan or program is not timely submitted for review in compliance with a deadline set by the board, the authority may exercise its delegated power to disapprove such plan or program upon the affirmative vote of two-thirds of the authorized membership of the board to a motion made for that purpose;

provided, however, that where one or more vacancies exist on the board and the board is not otherwise prohibited from entertaining a motion requiring such a supermajority, such motion shall carry on the affirmative vote of two-thirds of the members present. On any motion requiring a supermajority for passage, any abstention not authorized as provided in this chapter shall be deemed an affirmative vote for purposes of passage or failure of such motion.

(c) The authority shall formulate measurable targets for air quality improvements and standards within the geographic area over which the authority has jurisdiction pursuant to this chapter, and annually shall report such targets to the Governor, together with an assessment of progress toward achieving such targets and projected measures and timetables for achieving such targets. (Code 1981, § 50-32-13, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-14. Expenditure of state or federal funds.

In any case where a development of regional impact, as determined by the Department of Community Affairs pursuant to Article 1 of Chapter 8 of this title, is planned within the geographic area over which the authority has jurisdiction which requires the expenditure of state or federal funds by the state or any political subdivision, agency, authority, or instrumentality thereof to create land transportation services or access to such development, any expenditure of such funds shall be prohibited unless and until the plan for such development and such expenditures is reviewed and

approved by the authority. The decision of the authority to allow or disallow the expenditure of such funds shall be final and nonreviewable, except that such decision shall be reversed where a resolution for such purpose is passed by vote of three-fourths of the authorized membership of the county commission of the county in which the development of regional impact is planned or, if such development is within a municipality, by vote of three-fourths of the authorized membership of the city council. Such a vote shall not constitute failure or refusal by the local government for purposes of Code Section 50-32-53. (Code 1981, § 50-32-14, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, and correct the Code, revised language in 2009, part of an Act to revise, modernize, this Code section.

50-32-15. Issuance of bonds.

(a) In furtherance of the purposes of the authority, no project of the Georgia Rail Passenger Authority created by Article 9 of Chapter 9 of Title 46 which is located wholly or partly within the geographic area over which the authority has jurisdiction shall be commenced after May 6, 1999, unless such project is approved by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority pursuant to a motion made for that purpose; provided, however, that where such project is an approved transportation control measure pursuant to an approved state implementation plan, such project may proceed consistent with applicable federal law and regulation.

(b) From time to time, by the affirmative vote of two-thirds of the authorized membership of the board of directors of the authority, the authority may direct the Georgia Environmental Facilities Authority to issue revenue bonds, bonds, notes, loans, credit agreements, or other obligations or facilities to finance, in whole or in part, any project or the cost of any project of the authority wholly or partly within the geographic area over which the authority has jurisdiction, by means of a loan, extension of credit, or grant from the Georgia Environmental Facilities Authority to the authority, on such terms or conditions as shall be concluded between the two authorities.

(c) The Georgia Environmental Facilities Authority shall be subordinate to the authority in all respects, with respect to authority projects, within the geographic area over which the authority has jurisdiction; and, in the event of any conflict with the provisions of Chapter 23 of this title, the provisions of this chapter shall prevail in all respects. It is expressly provided, however, that nothing in this Code section and nothing in this chapter shall be construed to permit in any manner the alteration, elimination, or impairment of any term, provision, covenant, or obligation imposed on any state authority, including but not limited to the Georgia Environmental Facilities Authority, the State Toll Road Authority, the Georgia Regional Transporta-

tion Authority, or the Georgia Rail Passenger Authority, for the benefit of any owner or holder of any bond, note, or other obligation of any such authority. (Code 1981, § 50-32-15, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2009, p. 8, § 50/SB 46.)

The 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, revised punctuation in subsection (c).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, “May 6, 1999,” was substituted for “the effective date of this chapter” in subsection (a).

50-32-16. Utilization of appropriated funds.

Notwithstanding any provision of law to the contrary, funds appropriated to or otherwise obtained by the Department of Transportation pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of this state and paragraphs (2) and (7) of subsection (a) of Code Section 32-2-2 shall not be utilized for designation, improvement, or construction of any land public transportation system or any part of the state highway system lying within the boundaries of a county whose special district created pursuant to this chapter has been activated pursuant to the provisions of this chapter, unless such designation, improvement, or construction is safety related or has been conducted by or through, or approved by, the authority, or such funds are within categories applicable to state-wide inspection or improvement required for compliance with federal law or regulation. (Code 1981, § 50-32-16, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-17. Power of eminent domain.

(a) After the adoption by the authority of a resolution declaring that the acquisition of the real property described therein is necessary for the purposes of this chapter, the authority may exercise the power of eminent domain in the manner provided in Title 22; or it may exercise the power of eminent domain in the manner provided by any other applicable statutory provisions for the exercise of such power; provided, however, that the provisions of Article 7 of Chapter 16 of this title shall not be applicable to the exercise of the power of eminent domain by the authority. Property already devoted to public use may be acquired, except that no real property belonging to the state other than property acquired by or for the purposes of the Department of Transportation may be acquired without the consent of the state.

(b) Real property acquired by the authority in any manner for the purposes of this chapter shall not be subject to the exercise of eminent domain by any state department, division, board, bureau, commission, authority, or other agency or instrumentality of the executive branch of state government, or by any political subdivision of the state or any agency, authority, or instrumentality thereof, without the consent of the authority. (Code 1981, § 50-32-17, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-18. Rights of authority.

The authority shall have all rights afforded the state by virtue of the Constitution of the United States, and nothing in this chapter shall be construed to remove any such rights. (Code 1981, § 50-32-18, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-19. Liability of authority.

Neither the members of the authority nor any officer or employee of the authority acting on behalf thereof, while acting within the scope of his or her authority, shall be subject to any liability resulting from:

- (1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority;
- (2) The construction, ownership, maintenance, or operation of any project, facility, or undertaking authorized by the authority and owned by a local government; or
- (3) Carrying out any of the powers expressly given in this chapter. (Code 1981, § 50-32-19, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-20. Access to all books, records, and other information resources; assistance of personnel; use of facilities, vehicles, aircraft, and other equipment.

(a) Upon request of the board of the authority, the Department of Transportation and the Department of Natural Resources shall provide to the authority and its authorized personnel and agents access to all books, records, and other information resources available to those departments which are not of a commercial proprietary nature and shall assist the authority in identifying and locating such information resources. Reimbursement for costs of identification, location, transfer, or reproduction of such information resources, including personnel costs incurred by the respective departments for such purposes, shall be made by the authority to those respective departments.

(b) The authority may request from time to time, and the Department of Transportation and the Department of Natural Resources shall provide as permissible under the Constitution and laws of this state, the assistance of personnel and the use of facilities, vehicles, aircraft, and equipment of those departments, and reimbursement for all costs and salaries thereby incurred by the respective departments shall be made by the authority to those respective departments. (Code 1981, § 50-32-20, enacted by Ga. L. 1999, p. 112, § 7.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a comma was deleted following “nature” in the first sentence of subsection (a).

ARTICLE 3

FUNDING

Law reviews. — For note, “Standards for Smart Growth: Searching for Limits on Agency Discretion and the Georgia Regional Transportation Authority,” see 36 Ga. L. Rev. 247 (2001).

50-32-30. Funding resources.

In accomplishing its purposes pursuant to the provisions of this chapter, the authority may utilize, unless otherwise prohibited by law, any combination of the following funding resources:

- (1) Revenue bonds as authorized by this chapter;
- (2) Guaranteed revenue bonds as authorized by this chapter;
- (3) Funds obtained in a special district created and activated pursuant to this chapter, for the purposes of providing local land transportation and air quality services within such district or, by contract with, between, and among local governments within such special districts, throughout such districts;
- (4) Moneys borrowed by the authority pursuant to the provisions of this chapter;
- (5) Such federal funds as may from time to time be made available to the authority or for purposes coincident with the purposes of the authority within the territory over which the authority has jurisdiction; and
- (6) Such grants or contributions from persons, firms, corporations, or other entities as the authority may receive from time to time. (Code 1981, § 50-32-30, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-31. Revenue bonds.

(a)(1) The authority shall have the power and is authorized at one time or from time to time to provide by one or more authorizing resolutions for the issuance of revenue bonds, but the authority shall not have the power to incur indebtedness under this subsection in excess of the cumulative principal sum of \$1 billion but excluding from such limit bonds issued for the purpose of refunding bonds which have been previously issued. The authority shall have the power to issue such revenue bonds and the proceeds thereof for the purpose of paying all or part of the costs of any project or undertaking which is for the purpose

of exercising the powers delegated to it by this chapter, and the construction and provision of such installations and facilities as the authority may from time to time deem advisable to construct or contract for those purposes, as such undertakings and facilities shall be designated in the resolution of the board of directors authorizing the issuance of such bonds.

(2) The revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state or any county, municipal corporation, or other political subdivision of the state.

(b) In addition, the authority shall have the power and is authorized to issue bonds in such principal amounts as the authority deems appropriate, such bonds to be primarily secured by a pool of obligations issued by local governments when the proceeds of the local government obligations are applied to projects of the authority.

(c) The authority shall have the power from time to time to refund any bonds by the issuance of new bonds whether the bonds to be refunded have or have not matured and may issue bonds partly to refund bonds then outstanding and partly for any other corporate purpose.

(d) Bonds issued by the authority may be general or limited obligations payable solely out of particular revenues or other moneys of the authority as may be designated in the proceedings of the authority under which the bonds shall be authorized to be issued, subject to any agreements entered into between the authority and state agencies, local government, or private parties and subject to any agreements with the owners of outstanding bonds pledging any particular revenues or moneys.

(e)(1) The authority is authorized to obtain from any department, agency, or corporation of the United States of America or governmental insurer, including the state, any insurance or guaranty, to the extent now or hereafter available, as to or for the payment or repayment of interest or principal, or both, or any part thereof on any bonds or notes issued by the authority or on any obligations of federal, state, or local governments purchased or held by the authority; and to enter into any agreement or contract with respect to any such insurance or guaranty, except to the extent that the same would in any way impair or interfere with the ability of the authority to perform and fulfill the terms of any agreement made with the owners of the bonds or notes of the authority.

(2) Bonds issued by the authority shall be authorized by resolution of the authority, be in such denominations, bear such date or dates, and mature at such time or times as the authority determines to be appropriate, except that bonds and any renewal thereof shall mature within 25 years of the date of their original issuance. Such bonds shall be subject to such terms of redemption, bear interest at such rate or rates payable at such times, be in registered form or book-entry form through a securities

depository, or both, as to principal or interest or both principal and interest, carry such registration privileges, be executed in such manner, be payable in such medium of payment at such place or places, and be subject to such terms and conditions as such resolution of the authority may provide; provided, however, in lieu of specifying the rate or rates of interest which the bonds to be issued by an authority are to bear, the resolution of the authority may provide that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest which may be fixed or may fluctuate or otherwise change from time to time as specified in the resolution or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, as specified. Bonds may be sold at public or private sale for such price or prices as the authority shall determine.

(3) Any resolution or resolutions authorizing bonds or any issue of bonds may contain provisions which may be a part of the contract with the owners of the bonds thereby authorized as to:

(A) Pledging all or part of its revenues, together with any other moneys, securities, contracts, or property, to secure the payment of the bonds, subject to such agreements with bond owners as may then exist;

(B) Setting aside of reserves and the creation of sinking funds and the regulation and disposition thereof;

(C) Limiting the purpose to which the proceeds from the sale of bonds may be applied;

(D) Limiting the right of the authority to restrict and regulate the use of any project or part thereof in connection with which bonds are issued;

(E) Limiting the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding or other bonds;

(F) Setting the procedure, if any, by which the terms of any contract with bond owners may be amended or abrogated, including the proportion of bond owners which must consent thereto and the manner in which such consent may be given;

(G) Creating special funds into which any revenues or other moneys may be deposited;

(H) Setting the terms and provisions of any trust, deed, or indenture or other agreement under which the bonds may be issued;

(I) Vesting in a trustee or trustees such properties, rights, powers, and duties in trust as the authority may determine;

(J) Defining the acts or omissions to act which may constitute a default in the obligations and duties of the authority to the bond owners and providing for the rights and remedies of the bond owners in the event of such default, including as a matter of right the appointment of a receiver; provided, however, that such rights and remedies shall not be inconsistent with the general laws of the state and other provisions of this chapter;

(K) Limiting the power of the authority to sell or otherwise dispose of any environmental facility or any part thereof or other property, including municipal bonds held by it;

(L) Limiting the amount of revenues and other moneys to be expended for operating, administrative, or other expenses of the authority;

(M) Providing for the payment of the proceeds of bonds, obligations, revenues, and other moneys to a trustee or other depository and for the method of disbursement thereof with such safeguards and restrictions as the authority may determine; and

(N) Establishing any other matters of like or different character which in any way affect the security for the bonds or the rights and remedies of bond owners.

(4) In addition to the powers conferred upon the authority to secure its bonds, the authority shall have power in connection with the issuance of bonds to enter into such agreements as the authority may deem necessary, consistent, or desirable concerning the use or disposition of its revenues or other moneys or property, including the mortgaging of any property and the entrusting, pledging, or creation of any other security interest in any such revenues, moneys, or property and the doing of any act, including refraining from doing any act, which the authority would have the right to do in the absence of such agreements. The authority shall have power to enter into amendments of any such agreements within the powers granted to the authority by this chapter and to perform such agreements. The provisions of any such agreements may be made a part of the contract with the owners of bonds of the authority.

(5) Any pledge of or other security interest in revenues, moneys, accounts, contract rights, general intangibles, or other personal property made or created by the authority shall be valid, binding, and perfected from the time when such pledge is made or other security interest attaches without any physical delivery of the collateral or further act, and the lien of any such pledge or other security interest shall be valid, binding, and perfected against all parties having claims of any kind in tort, contract, or otherwise against the authority irrespective of whether or not such parties have notice thereof. No instrument by which such a pledge or security interest is created nor any financing statement need be recorded or filed.

(6) All bonds issued by the authority shall be executed in the name of the authority by the chairperson and secretary of the authority and shall be sealed with the official seal or a facsimile thereof. The facsimile signature of the chairperson and the secretary of the authority may be imprinted in lieu of the manual signature if the authority so directs. Bonds bearing the manual or facsimile signature of a person in office at the time such signature was signed or imprinted shall be fully valid, notwithstanding the fact that before or after delivery thereof such person ceased to hold such office.

(7) Prior to the preparation of definitive bonds, the authority may issue interim receipts, interim certificates, or temporary bonds exchangeable for definitive bonds upon the issuance of the latter; the authority may provide for the replacement of any bond which shall become mutilated or be destroyed or lost.

(8) All bonds issued by the authority under this chapter may be executed, confirmed, and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as otherwise provided in this chapter.

(9) The venue for all bond validation proceedings pursuant to this chapter shall be Fulton County, and the Superior Court of Fulton County shall have exclusive final court jurisdiction over such proceedings.

(10) Bonds issued by the authority shall have a certificate of validation bearing the facsimile signature of the clerk of the Superior Court of Fulton County and shall state the date on which said bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court of this state.

(11) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation shall be as follows for each bond, regardless of the denomination of such bond:

(A) Fifty cents each for the first 100 bonds;

(B) Twenty-five cents each for the next 400 bonds; and

(C) Ten cents for each such bond over 500.

(12) Whether or not the bonds of the authority are of such form and character as to be negotiable instruments, the bonds are made negotiable instruments within the meaning of and for all the purposes of Georgia law subject only to the provisions of the bonds for registration.

(13) Neither the members of the authority nor any person executing bonds shall be liable personally thereon or be subject to any personal liability or accountability solely by reason of the issuance thereof.

(14) The authority, subject to such agreements with bond owners as then may exist, shall have power out of any moneys available therefor to purchase bonds of the authority, which shall thereupon be canceled, at a price not in excess of the following:

(A) If the bonds are then redeemable, the redemption price then applicable plus accrued interest to the next interest payment date; or

(B) If the bonds are not then redeemable, the redemption price applicable on the first date after such purchase upon which the bonds become subject to redemption, plus accrued interest to the next interest payment date.

(15) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General, the notice to the public of the time, place, and date of the validation hearing, and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest, which rate may be fixed or may fluctuate or otherwise change from time to time, specified in such notices and petition and complaint or may state that, in the event the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate, which rate may be fixed or may fluctuate or otherwise change from time to time, so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint. (Code 1981, § 50-32-31, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-32. Guaranteed revenue bonds.

(a) The authority shall have the power and is authorized to issue guaranteed revenue bonds in a maximum aggregate principal amount not to exceed \$1 billion, under the terms and conditions set forth in this chapter, pursuant to the provisions of Article 2 of Chapter 17 of this title, which bonds shall constitute guaranteed revenue debt under Article VII, Section IV, Paragraph III of the Constitution of this state. The General Assembly hereby finds and determines that such issue will be self-liquidating over the life of the issue, and declares its intent to appropriate an amount equal to the highest annual debt service requirements for such issue. The proceeds of such bonds and the investment earnings thereon shall be used to finance land public transportation facilities or systems, including any costs of such projects.

(b) The guaranteed revenue bonds and the interest payable thereon shall be exempt from all taxation within the state imposed by the state or

any county, municipal corporation, or other political subdivision of the state. (Code 1981, § 50-32-32, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-33. Bonds are made securities.

The bonds of the authority are made securities in which all public officials and bodies of the state and all counties and municipalities, all insurance companies and associations, and other persons carrying on an insurance business, all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, investment companies and other persons carrying on a banking business, and administrators, guardians, executors, trustees, and other fiduciaries and all other persons whatsoever, who are now or may hereafter be authorized to invest in bonds or other obligations of the state, may properly and legally invest funds including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and may be received by all public officers and bodies of this state and all counties and municipalities for any purposes for which the deposit of bonds or other obligations of this state are now or hereafter may be authorized. (Code 1981, § 50-32-33, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-34. Pledge by the state.

The State of Georgia does pledge to and agree with the owners of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the owners of bonds or in any way impair the rights and remedies of bond owners until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such owners, are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bond owners. (Code 1981, § 50-32-34, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-35. Applicability of Chapter 5 of Title 10.

The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, known as the “Georgia Uniform Securities Act of 2008.” No notice, proceeding, or publication except those required in this chapter shall be necessary to the performance of any act authorized in this chapter; nor shall any such act be subject to referendum. (Code 1981, § 50-32-35, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2008, p. 381, § 10/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted “‘Georgia Uniform Securities Act of 2008’” for “‘Georgia Securities Act of 1973’” at the end of the first sentence.

50-32-36. State immune from obligations or indebtedness created by authority.

No bonds, notes, or other obligations of and no indebtedness incurred by the authority, other than guaranteed revenue bonds, shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or of its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt. (Code 1981, § 50-32-36, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-37. Legislative findings; bonds, notes, or other obligations issued by the authority exempt from taxation.

It is found, determined, and declared that the creation of this authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of the state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this chapter. For such reasons the state covenants with the owners from time to time of the bonds, notes, and other obligations issued under this chapter that the authority shall not be required to pay any taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others, or upon its activities in the operation or maintenance of any such property or on any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise, and that the bonds, notes, and other obligations of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this chapter shall include an exemption from sales and use tax on property purchased by the authority or for use by the authority. (Code 1981, § 50-32-37, enacted by Ga. L. 1999, p. 112, § 7; Ga. L. 2005, p. 19, § 1/HB 281.)

50-32-38. Issuance of bonds or other obligations subject to approval of commission.

The issuance of any bond, revenue bond, note, or other obligation or incurring of debt, public or otherwise, by the authority must be approved by the commission established by Article VII, Section IV, Paragraph VII of

the Constitution of the State of Georgia of 1983 or its successor. (Code 1981, § 50-32-38, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-39. Limitation of indebtedness.

No bonded indebtedness of any kind shall be incurred by the authority or on behalf of the authority by the Georgia Environmental Facilities Authority at any time when the highest aggregate annual debt service requirements of the state for the then current fiscal year or any subsequent fiscal year for outstanding general obligation debt and guaranteed revenue debt, including the proposed debt and treating it as state general obligation debt or guaranteed revenue debt for purposes of calculating debt limitations under this Code section, and the highest aggregate annual payments for the then current fiscal year or any subsequent fiscal year of the state under all contracts then in force to which the provisions of the second paragraph of Article IX, Section VI, Paragraph I(a) of the Constitution of 1976 are applicable, exceed 7.5 percent of the total revenue receipts, less refunds of the state treasury in the fiscal year immediately preceding the fiscal year in which any such debt is to be incurred. (Code 1981, § 50-32-39, enacted by Ga. L. 1999, p. 112, § 7.)

ARTICLE 4

LOCAL GOVERNMENT SERVICES

Law reviews. — For note, “Standards for Transportation Authority,” see 36 Ga. L. Rev. Smart Growth: Searching for Limits on 247 (2001). Agency Discretion and the Georgia Regional

50-32-50. Local government services approval and funding.

(a) Any local government which is within the geographic area over which the authority has jurisdiction or which is within any county for which a special district has been otherwise activated pursuant to this chapter may provide, subject to the authorization of the authority as provided for in this chapter, within the territorial limits of the special district authorized by this chapter local government services consisting of land public transportation and air quality control, consistent with the terms of any authorizing resolution of the authority and, further, consistent with the regional plan or plans approved by the authority pursuant to its delegated powers if such plans are applicable to such local government’s territory. In providing such local services in such special district pursuant to the provisions of this chapter, the local government shall utilize one or more of the funding mechanisms enumerated in Article IX, Section II, Paragraph VI of the Constitution of this state for the purpose of funding, in whole or in part, only the local government services authorized by this chapter, and such services may be provided, in whole or in part, pursuant to a contract

between one or more local governments within a special district activated pursuant to this chapter.

(b) Projects and facilities for the provision of local government services through special districts authorized by this chapter shall be planned by the authority consistent with approved regional plans, where applicable, and may be designed, constructed, managed, operated, and funded by the authority in whole or in part. (Code 1981, § 50-32-50, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-51. Lease agreements.

(a) For the purposes of this Code section, the term "lease agreement" shall mean and include a lease, operating lease rental agreement, usufruct, sale and lease back, or any other lease agreement having a term of not more than 50 years and concerning real, personal, or mixed property, any right, title, or interest therein by and between the state, the authority, a local government, or any combination thereof.

(b) A local government by resolution of its governing body may enter into a lease agreement for the provision of land public transportation or air quality services utilizing facilities owned by the authority upon such terms and conditions as the authority shall determine to be reasonable including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(c) No lease agreement shall be deemed to be a contract subject to any law requiring that a contract shall be let only after receipt of competitive bids.

(d) Any lease agreement may provide for the construction of such land public transportation or air quality facility by the local government as agent for the authority. In such event, all contracts for such construction shall be let by such local government in accordance with the provisions of law otherwise applicable to the letting of such contracts by such local government and with the provisions of state law pertaining to prevailing wages, labor standards, and working hours. Any such lease agreement may contain provisions by which such local government shall indemnify the authority against any and all damages resulting from acts or omissions to act on the part of such local government or its officers, agents, or employees in constructing such facility or facilities, in letting any contracts in connection therewith, or in operating and maintaining the same.

(e) Any lease agreement executed by the authority directly with any local government may provide at the termination thereof that title to the land public transportation or air quality facility project shall vest in the local government or its successor in interest, if any, free and clear of any liens or encumbrances created in connection with any contract or bonds, revenue bonds, notes, or other obligations involving the authority.

(f) Any lease agreement directly between the state or authority and a local government may contain provisions requiring the local government to perform any or all of the following:

(1) In the case of a land public transportation facility, to establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, replacement, and repairs of the land public transportation facility of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such land public transportation facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(2) In the case of an air quality facility, to establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, and repairs of the air quality facility of such local government; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such air quality facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such lease agreement, including amounts for the creation and maintenance of any required reserves;

(3) To create and maintain reasonable reserves or other special funds;

(4) To create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such lease agreement and for the deposit therein of such revenues as shall be sufficient to pay said lease rentals and any other amounts becoming due under such lease agreements as the same shall become due and payable; or

(5) To perform such other acts and take such other action as may be deemed necessary and desirable by the authority to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the authority in the event of a default by such local government in such payment. (Code 1981, § 50-32-51, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-52. Grants or loans to local government.

(a) The authority may make grants or loans to a local government to pay all or any part of the cost of a project. In the event the local government

agrees to accept such grants or loans, the authority may require the local government to issue bonds or revenue bonds as evidence of such grants or loans. The authority and a local government may enter into such loan commitments and option agreements as may be determined appropriate by the authority.

(b) The authority may require as a condition of any grant or loan to a local government that such local government shall perform any or all of the following:

(1) In the case of grants or loans for a land public transportation or air quality facility, establish and collect rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, replacement, renewal, and repairs; and

(B) Outstanding indebtedness incurred for the purposes of such facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(2) In the case of loans for an air quality facility, establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) Costs of operation, maintenance, renewal, replacement, and repairs of the air quality facility of such local government; and

(B) Outstanding indebtedness incurred for the purposes of such air quality facility, including the principal of and interest on the bonds, revenue bonds, notes, or other obligations issued by the local government, as the same shall become due and payable, and to create and maintain any required reserves;

(3) Create and maintain a special fund or funds, as additional security for the payment of the principal of such revenue bonds and the interest thereon and any other amounts becoming due under any agreement, entered into in connection therewith and for the deposit therein of such revenues as shall be sufficient to make such payment as the same shall become due and payable;

(4) Create and maintain such other special funds as may be required by the authority; and

(5) Perform such other acts, including the conveyance of real and personal property together with all right, title, or interest therein to the authority, or take other actions as may be deemed necessary or desirable by the authority to secure the payment of the principal of and interest on such bonds, revenue bonds, notes, or other obligations and to provide for

the remedies of the authority in the event of any default by such local government in such payment.

(c) All local governments issuing and selling bonds, revenue bonds, notes, or other obligations to the authority are authorized to perform such acts, take such action, adopt such proceedings, and to make and carry out such contracts with the authority as may be contemplated by this chapter.

(d) In connection with the making of any loan -authorized by this chapter, the authority may fix and collect such fees and charges including, but not limited to, reimbursement of all costs of financing by the authority, as the authority shall determine to be reasonable. Neither the Public Service Commission nor any local government or state agency shall have jurisdiction over the authority's power over the regulation of such fees or charges. (Code 1981, § 50-32-52, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-53. Effect of failure to implement local government services on state and federal grants.

(a) No local government which, upon the activation of a special district created by this chapter, fails or refuses to plan, coordinate, and implement local government services in such special district as provided for in this chapter and authorized pursuant to a resolution of the authority shall be eligible for any state grant of any kind whatsoever except such grants as may be related directly to the physical and mental health, education, and police protection of its residents, nor shall any funds appropriated to or otherwise obtained by the Department of Transportation pursuant to Article III, Section IX, Paragraph VI(b) of the Constitution of this state and paragraphs (2) and (7) of subsection (a) of Code Section 32-2-2 be utilized for designation, improvement, funding, or construction of any land public transportation system or any part of the state highway system lying within the boundaries of such local government's jurisdiction, or for the nonsafety related maintenance of any land public transportation system, highway, road, or bridge operating or located within such local government's jurisdictional boundaries, nor shall such local government be permitted to receive federal grants or funds for any such purpose, unless such funds are within categories applicable to state-wide inspection or improvement required for compliance with federal law or regulation.

(b) By resolution, the authority may restore eligibility for funding and receipt of grants denied pursuant to the provisions of subsection (a) of this Code section where such local government demonstrates to the satisfaction of the authority that it is taking or shall take appropriate action to cooperate with the authority. (Code 1981, § 50-32-53, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-54. Failure of local government to collect and remit amounts due to authority.

(a) In the event of a failure of any local government to collect and remit in full all amounts due to the authority and all amounts due to others, which involve the credit or guarantee of the authority or of the state, on the date such amounts are due under the terms of any bond, revenue bond, note, or other obligation of the local government, it shall be the duty of the authority to notify the director of the Office of Treasury and Fiscal Services who shall withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities allotted to such local government, excluding funds for education purposes, until such local government has collected and remitted in full all sums due and cured or remedied all defaults on any such bond, revenue bond, note, or other obligation.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government which would violate contracts to which the state is a party, the requirements of federal law imposed on the state, or judgments of any court binding the state. (Code 1981, § 50-32-54, enacted by Ga. L. 1999, p. 112, § 7.)

ARTICLE 5

ALLOCATION OF FUNDS BY DEPARTMENT OF TRANSPORTATION

Law reviews. — For note, “Standards for Transportation Authority,” see 36 Ga. L. Rev. Smart Growth: Searching for Limits on 247 (2001).
Agency Discretion and the Georgia Regional

50-32-60. Department of Transportation’s allocation of funds unaltered.

The prohibition of expenditures or withholding of funds for public road or other public transportation purposes by the authority pursuant to any provision of this chapter shall not alter the Department of Transportation’s budgeted or programmed allocation of state or federal funds among congressional districts pursuant to Code Section 32-5-30. (Code 1981, § 50-32-60, enacted by Ga. L. 1999, p. 112, § 7.)

ARTICLE 6

CONSTRUCTION OF CHAPTER

Law reviews. — For note, “Standards for Transportation Authority,” see 36 Ga. L. Rev. Smart Growth: Searching for Limits on 247 (2001).
Agency Discretion and the Georgia Regional

50-32-70. Chapter to be liberally construed.

This chapter, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes specified in this chapter. (Code 1981, § 50-32-70, enacted by Ga. L. 1999, p. 112, § 7.)

50-32-71. Exemption of buses, motor vehicles, and rapid rail systems of the authority from motor carrier regulations.

No provision of Chapter 7 of Title 46 shall apply to any bus, other motor vehicle, or rapid rail system of the authority which provides transit services. (Code 1981, § 50-32-71, enacted by Ga. L. 2005, p. 19, § 2/HB 281.)

CHAPTER 33**YEAR 2000 READINESS**

Sec.

50-33-1 through 50-33-6 [Repealed].

50-33-1 through 50-33-6.

Repealed by Ga. L. 1999, p. 161, § 3, effective December 31, 2001.

Editor's notes. — This chapter consisted of Code Sections 50-33-1 through 50-33-6, relating to Year 2000 Readiness, and was based on Ga. L. 1999, p. 161, § 1.

Ga. L. 1999, p. 161, § 3, provided for the repeal of this chapter effective December 31,

2001, but also provided "that proceedings for enforcement of penalties provided for in this Act shall not be abated by such repeal, and such penalties may be imposed and collected where such proceedings were pending on or prior to that date."

CHAPTER 34

ONEGEORGIA AUTHORITY

Sec.		Sec.	
50-34-1.	Short title.		bonds by trust agreement or indenture.
50-34-2.	Definitions.	50-34-12.	All moneys received deemed to be trust funds; pledge of assets, funds, and properties for payment of bonds.
50-34-3.	Creation, membership, power, and authority of OneGeorgia Authority.	50-34-13.	Annual and biannual audits and reports.
50-34-4.	Limitation on the authority's liability.	50-34-14.	Termination of the authority.
50-34-5.	Powers of the authority vested in the members.	50-34-15.	Facilitation of economic development for enterprises throughout the state.
50-34-6.	Powers of the authority.	50-34-16.	Competitive bidding not a requirement.
50-34-7.	Powers to issue bonds and incur indebtedness.	50-34-17.	OneGeorgia Authority Overview Committee established; duties.
50-34-8.	Obligations not subject to the "Georgia Uniform Securities Act of 2008"; setting of rates, fees, and charges for loans; power to issue bonds.	50-34-18.	Transfer of positions authorized by authority to Department of Community Affairs.
50-34-9.	Bonds as securities.		
50-34-10.	Payment of bond proceeds.		
50-34-11.	Power to secure issuance of		

Administrative rules and regulations. — Equity Fund, Official Compilation of the Rules and Regulations of the State of Georgia, OneGeorgia Authority, Chapter 413-1.
Edge Fund, Official Compilation of the Rules and Regulations of the State of Georgia, OneGeorgia Authority, Chapter 413-2.
The OneGeorgia Authority's regional E-9-1-1 fund program, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of OneGeorgia Authority, Chapter 413-4.

Strategic Industries Loan Fund, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of OneGeorgia Authority, Chapter 413-5.
Entrepreneur and small business development loan guarantee program, Official Compilation of the Rules and Regulations of the State of Georgia, Grants of OneGeorgia Authority, Chapter 413-6.
Law reviews. — For note on 2000 enactment of this chapter, see 17 Ga. St. U.L. Rev. 302 (2000).

50-34-1. Short title.

- (a) This chapter shall be known and may be cited as the "OneGeorgia Authority Act."
- (b) The General Assembly finds that:
- (1) Despite the overall prosperity of the State of Georgia, the economic prosperity and development of rural Georgia has lagged behind that of the urban areas of the state.
- (2) It is declared to be the public policy of this state to promote the health, welfare, safety, and economic security of the rural citizens of the

state through the development and retention of employment opportunities in rural areas and the enhancement of the infrastructures which accomplish that goal.

(3) The public policies of this state as set forth in this Code section cannot be fully attained without the use of public financing and financial assistance, either direct or indirect; and such public financing can best be provided by the creation of a rural economic development authority having as its members certain public officers and officials whose attentions and efforts will thereby be focused on the prosperity of rural Georgia. (Code 1981, § 50-34-1, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-2. Definitions.

As used in this chapter, the term:

(1) “Authority” means the OneGeorgia Authority or any subsidiary corporation created by the board of directors of the OneGeorgia Authority pursuant to this chapter.

(2) “Bonds” or “revenue bonds” means any bonds, revenue bonds, notes, interim certificates, bond or revenue anticipation notes, or other evidences of indebtedness of the authority issued under this chapter, including, without limitation, obligations issued to refund any of the foregoing, notwithstanding that such bonds may be secured by the full faith and credit of a business, enterprise, or federal tobacco settlement proceeds paid to the State of Georgia.

(3) “Business” means any lawful activity engaged in for profit or not for profit, whether organized as a corporation; a partnership, either general or limited; a sole proprietorship; an educational institution; or otherwise.

(4) “Cost of project,” “cost of any project,” or “cost of an enterprise” means, as the context may require, all, including but without limiting the generality of the foregoing, of the following:

(A) All costs of acquisition, by purchase or otherwise, and all costs of installation, modification, repair, reconditioning, renovation, remodeling, extension, rehabilitation, or preservation incurred in connection with any project or part of any project;

(B) All costs of real property, fixtures, equipment, or personal property used in or in connection with or necessary or convenient for any project or any facility or facilities related thereto, including, but not limited to, cost of land, interests in land, options to purchase, estates for years, easements, rights, improvements, water rights, and connections for utility services; the cost of fees, franchises, permits, approvals, licenses, and certificates or the cost of securing any of the foregoing;

the cost of preparation of any application therefor; and the cost of all fixtures, machinery, equipment, furniture, and other property used in connection with or necessary or convenient for any project or facility;

(C) All financing charges, including, but not limited to, premiums and prepayment penalties; interest accrued or to accrue prior to and up to three years after the acquisition, installation, financing, or commencement of a project and any other cost related to a project up to three years after such acquisition, installation, financing, refinancing, or commencement; any loan or loan guarantee fees; and any fees paid to or which accrue to the authority regardless of the timing of such fees, prior to, during the operation of, or after the acquisition, installation, financing, refinancing, or commencement of a project;

(D) The cost of architectural, engineering, legal, financing, surveying, planning, environmental reports and inspections, accounting services, and any and all other necessary technical personnel or other expenses necessary or incident to planning, providing, or determining the need for or the feasibility or practicability of a project or financial assistance to or financing of a project;

(E) All fees for legal, accounting, bond, underwriting, trustee, paying agent, option provider, credit enhancement, and fiscal agent services for bondholders under any bond resolution, trust agreement, indenture, or similar instrument or agreement and all expenses incurred by any of the above;

(F) The cost of plans and specifications for any project;

(G) The cost of title insurance and title examinations with respect to any project;

(H) Administrative costs, expenses, and fees rendered or incurred with respect to any project;

(I) The cost of the establishment of any reserves, including, but not limited to, any sinking fund and debt service reserves;

(J) All costs of servicing any loans made or acquired;

(K) The cost of the authority incurred in connection with providing a project, including reasonable sums to reimburse the authority for time spent by its agents or employees in providing and financing a project; and

(L) The cost paid or incurred for the administration of any program for the purchase or lease of or the making of loans for a project by the authority and any program for the sale or lease of or making of loans for a project to any business, enterprise, local government, or any other person.

(5) "Enterprise" means a business engaged in manufacturing, producing, processing, assembling, repairing, extracting, warehousing, handling, or distributing any agricultural, manufactured, mining, or industrial product or any combination of the foregoing; a business engaged in furnishing or facilitating communications, computer services, research, or transportation; a business engaged in tourism; a business engaged in commercial or retail sales or service; a business engaged in construction; and corporate and management offices and services provided in connection with any of the foregoing, in isolation or in any combination that involves, in each case, either the creation of new or additional employment, the retention of existing employment or payroll, or the increase of average payroll for employees of such enterprise.

(6) "Facilities" means any real property, personal property, or mixed property of any and every kind.

(7) "Local government" or "local governing authority" means any municipal corporation or county or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(8) "Operating capital" means the cost of general operation and administration of a business for a temporary period, not to exceed one year.

(9) "Project" includes:

(A) Any one or more buildings or structures to be used in the production, manufacturing, processing, assembling, storing, or handling of any agricultural, manufactured, mining, or industrial product or any combination of the foregoing, in every case with all necessary or useful furnishings, machinery, equipment, parking facilities, landscaping, and facilities for outdoor storage, all as determined by the authority, which determination shall be final and not subject to review; and there may be included as part of any such project all improvements necessary to the full utilization thereof, including site preparation, roads and streets, sidewalks, water supply, outdoor lighting, belt line railroad sidings and lead tracks, bridges, causeways, terminals for railroad, automotive, and air transportation, transportation facilities incidental to the project, and the dredging and improving of harbors and waterways, none of which foregoing descriptive words shall be construed to constitute a limitation;

(B) The acquisition, construction, leasing, or equipping of new industrial facilities or the improvement, modification, acquisition, expansion, modernization, leasing, equipping, or remodeling of existing industrial facilities;

(C) The acquisition, construction, improvement, or modification of any property, real or personal, used as air or water pollution control

facilities which the authority has determined is necessary for the operation of the industry or industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term “air pollution control facility” means any property used, in whole or in substantial part, to abate or control atmospheric pollution or contamination by removing, altering, disposing of, or storing atmospheric pollutants or contaminants, if such facility is in furtherance of applicable federal, state, or local standards for abatement or control of atmospheric pollutants or contaminants; and provided, further, that, for the purpose of this subparagraph, the term “water pollution control facility” means any property used, in whole or in substantial part, to abate or control water pollution or contamination by removing, altering, disposing of, or storing pollutants, contaminants, wastes, or heat, including the necessary intercepting sewers, outfall sewers, pumping, power, and other equipment, holding ponds, lagoons, and appurtenances thereto, if such facility is in the furtherance of applicable federal, state, or local standards for the abatement or control of water pollution or contamination;

(D) The acquisition, construction, improvement, or modification of any property, real or personal, used as or in connection with a sewage disposal facility or a solid waste disposal facility which the authority has determined is necessary for the operation of the industries which the same is to serve and which is necessary for the public welfare, provided that, for the purposes of this subparagraph, the term “sewage disposal facility” means any property used for the collection, storage, treatment, utilization, processing, or final disposal of sewage; for the purposes of this subparagraph, the term “solid waste disposal facility” means any property used for the collection, storage, treatment, utilization, processing, or final disposal of solid waste; for the purposes of this subparagraph, the term “solid waste” means garbage, refuse, or other discarded solid materials, including solid waste materials resulting from industrial and agricultural operations and from community activities but does not include solids or dissolved materials in domestic sewage or other significant pollutants in water resources, such as salt, dissolved or suspended solids in industrial waste-water effluents, and dissolved materials in irrigation return flows; for the purposes of this subparagraph, the word “garbage” includes putrescible wastes, including animal and vegetable matters, animal offal and carcasses, and recognizable industrial by-products but excludes sewage and human wastes; and for the purposes of this subparagraph, the word “refuse” includes all nonputrescible wastes;

(E) The acquisition, construction, leasing, or financing of:

(i) An office building facility and related real and personal property for use by the authority or by any business, nonprofit, or

charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state and which shall be adjacent to or used in conjunction with any other existing or proposed project defined in this paragraph, which existing or proposed project is used or intended to be used by the authority or by such business or charitable corporation, association, or similar entity;

(ii) A separate office building facility and related real and personal property for use by the authority or by any business or charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state; or

(iii) Any real or personal property to be used by a charitable corporation, association, or similar entity which will further the development of trade, commerce, industry, or employment opportunities in this state;

(F) The acquisition, construction, equipping, improvement, modification, or expansion of any property, real or personal, for use by an enterprise; and

(G) The acquisition, construction, installation, modification, renovation, or rehabilitation of land, interest in land, buildings, structures, facilities, or other improvements and the acquisition, installation, modification, renovation, rehabilitation, or furnishing of fixtures, machinery, equipment, furniture, or other property of any nature whatsoever used on, in, or in connection with any such land, interest in land, building, structure, facility, or other improvement, all for the essential public purpose of the development of trade, commerce, industry, and employment opportunities. A project may be for any industrial, commercial, business, office, parking, public, or other use, provided that a majority of the members of the authority determines, by a duly adopted resolution, that the project and such uses thereof would further the public purpose of this chapter. (Code 1981, § 50-34-2, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2006, p. 72, § 50/SB 465.)

50-34-3. Creation, membership, power, and authority of OneGeorgia Authority.

(a) There is created a body corporate and politic to be known as the OneGeorgia Authority which shall be deemed to be an instrumentality of the state, and not a state agency, and a public corporation performing an essential governmental function.

(b) The authority shall consist of the Governor, who shall serve as chair of the authority; the Lieutenant Governor, who shall serve as vice chair of

the authority; the director of the Office of Planning and Budget, who shall serve as secretary of the authority; the commissioner of community affairs; the commissioner of economic development; and the commissioner of revenue.

(c) Except for the authorization of the issuance of bonds, the authority may delegate to the executive director such powers and duties as it may deem proper.

(d) The Governor shall appoint an executive director of the authority whose compensation shall be fixed by the authority.

(e) No part of the funds of the authority shall inure to the benefit of or be distributed to its members or officers or other private persons, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred. In addition, the authority shall be authorized and empowered to make loans and grants, allocate credits, provide financial assistance, and otherwise exercise its other powers in furtherance of its corporate purposes. No such loans or grants or financial assistance shall be made to, no credits shall be allocated to, and no property shall be purchased or leased from or sold, leased, or otherwise disposed of to any member or officer of the authority in his or her individual capacity or by virtue of partnership or ownership of a for profit corporation. This subsection does not preclude loans or grants to, financial assistance or allocation of credit to, or purchase or lease from or sale, lease, or disposal of property to any subsidiary corporation of the authority.

(f) The Attorney General shall provide legal services for the authority, and, in connection therewith, Code Sections 45-15-13 through 45-15-16 shall be fully applicable. (Code 1981, § 50-34-3, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 1059, § 3; Ga. L. 2004, p. 690, § 43.)

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, in subsection (c) (now subsection (b)), “commissioner of community affairs” was substituted for “commissioner of the Department of Community Affairs”, and “commissioner of rev-

enue” was substituted for “commissioner of the Department of Revenue”.

Pursuant to Code Section 28-9-5, in 2002, subsection (h) was redesignated as subsection (f).

50-34-4. Limitation on the authority’s liability.

Neither the members of the authority nor any officer or employee of the authority acting in behalf thereof, while acting within the scope of his or her authority, is subject to any liability resulting from:

- (1) The construction, ownership, maintenance, or operation of any project financed with the assistance of the authority; or
- (2) Carrying out any of the powers given in this chapter. (Code 1981, § 50-34-4, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-5. Powers of the authority vested in the members.

(a) The powers of the authority shall be vested in the members of the board of directors in office from time to time; and a majority of members in office shall constitute a quorum for the transaction of any business and for the exercise of any power or function of the authority.

(b) Action may be taken and motions and resolutions adopted by the board at any meeting thereof by the affirmative vote of a majority of present and voting board members.

(c) No vacancy in the membership of the board shall impair the right of the members to exercise all the powers and perform all duties of the board. (Code 1981, § 50-34-5, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-6. Powers of the authority.

(a) The authority shall have any and all powers necessary or convenient to its usefulness in carrying out and effectuating the purposes and provisions of this chapter which are not in conflict with the Constitution of this state, including, but without limiting the generality of the foregoing, the following powers:

(1) To sue and be sued in contract and in tort and to complain and defend in all courts;

(2) To adopt and alter a corporate seal;

(3) To adopt, amend, and repeal bylaws, rules and regulations, and policies and procedures for the regulation of its affairs and the conduct of its business, the election and duties of officers and employees of the authority, and such other matters as the authority may determine;

(4) To appoint and select officers, agents, and employees, including professional and administrative staff and personnel, financial advisers, consultants, fiscal agents, trustees, and accountants and to fix their compensation and pay their expenses, including the power to contract with the Department of Community Affairs and any other department, agency, board, commission, or authority of state government for professional, technical, clerical, and administrative support as may be required;

(5) To procure or to provide insurance against any loss in connection with its programs, property, and other assets;

(6) To borrow money and to issue notes and bonds and other obligations to accomplish its public purposes and to provide for the rights of the lenders or holders thereof;

(7) To pledge, mortgage, convey, assign, hypothecate securities, or otherwise encumber any property of the authority, including, but not

limited to, real property, fixtures, personal property, intangible property, revenues, income, charges, fees, or other funds and to execute any lease, trust indenture, trust agreement, resolution, agreement for the sale of the authority's bonds, loan agreement, mortgage, deed to secure debt, trust deed, security agreement, assignment, or other agreement or instrument as may be necessary or desirable, in the judgment of the authority, to secure any such bonds, which instruments or agreements may provide for foreclosure or forced sale of any property of the authority upon default in any obligation of the authority, either in payment of principal, premium, if any, or interest or in the performance of any term or condition contained in any such agreement or instrument; the state, on behalf of itself and each political subdivision, public body corporate and politic, or taxing district therein, waives any right it or such political subdivision, public body corporate and politic, or taxing district may have to prevent the forced sale or foreclosure of any property of the authority upon such default and agrees that any agreement or instrument encumbering such property may be foreclosed in accordance with law and the terms thereof;

(8) To extend credit, to make loans, to participate in the making of loans, to provide credit enhancement, and to provide or procure insurance;

(9) To collect fees and charges in connection with its bonds, loans, commitments, insurance, credit enhancement, and servicing, including, but not limited to, reimbursement of costs of financing;

(10) To sell loans, security interests, and other obligations of the authority at public or private sale; to negotiate modifications or alterations in loans, security interests, and other obligations of the authority; to foreclose on any security interest in default or commence any action to protect or enforce any right conferred upon it by any law, security agreement, deed of trust, deed to secure debt, contract, or other agreement; to bid for and purchase property which was the subject of such loan, security interest, or other obligation of the authority at any foreclosure or at any other sale; to acquire or take possession of such property; and to exercise any and all rights as provided by law or contract for the benefit or protection of the authority or holders of the authority's notes, bonds, or other obligations;

(11) To procure or to make and execute contracts, agreements, and other instruments, including interest rate swap or currency swap agreements, letters of credit, or other credit facilities or agreements, and to take such other actions and do such other things as the authority may deem appropriate to secure the payment of any loan, lease, or purchase payment owed to the authority or any bonds or other obligations issued by the authority, including the power to pay the cost of obtaining any such contracts, agreements, and other instruments;

(12) To receive and use the proceeds of any tax levied by the state or a local government or taxing district of the state enacted for the purposes of providing credit enhancement or for any other purpose for which the authority may use its own funds pursuant to this chapter;

(13) To receive and administer gifts, grants, and devises of money and property of any kind; to administer trusts; and to receive such part of the proceeds paid to the State of Georgia pursuant to funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies (*State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton County Superior Court, 19 December 9, 1998)), as the General Assembly shall from time to time appropriate for the purposes of the authority, and to sell, convey, or otherwise encumber such moneys appropriated from the proceeds of such settlement by capitalizing or securitizing the same and entering into contracts pertaining thereto in order to enable the authority, in its judgment, to better accomplish the purposes of this chapter;

(14) To acquire real and personal property in its own name to promote any of the public purposes of the authority or for the administration and operation of the authority;

(15) To provide and administer grant moneys for any of the public purposes of the authority and to comply with all conditions attached thereto;

(16) To contract for any period, not exceeding 50 years, with the state, any institution, department, agency, or authority of the state, or any local government within the state for the use by the authority of any facilities or services of any such entity or for the use by any such entity of any facilities or services of the authority, provided that such contracts shall deal with such activities and transactions as the authority and any such entity with which the authority contracts are authorized by law to undertake;

(17) To invest any accumulation of its funds, including, but without limiting the generality of the foregoing, funds received from the issuance of bonds and any sinking funds or reserves in any manner as it determines is in its best interests and to purchase its own bonds and notes;

(18) To hold title to any project financed by it, but it shall not be required to do so;

(19) To establish eligibility standards for financing and financial assistance and technical assistance authorized for projects under this chapter;

(20) To sell or otherwise dispose of unneeded or obsolete equipment or property of every nature and every kind;

(21) To lease as lessor any facility or any project for such rentals and upon such terms and conditions as the authority considers advisable and not in conflict with this chapter;

(22) To sell by installment or otherwise to sell by option or contract for sale and to convey all or any part of any item of any project or facility for such price and upon such terms and conditions as the authority considers advisable and which are not in conflict with this chapter;

(23) To manage property, intangible, real, and personal, owned by the authority or under its control by lease or by other means;

(24) To do any and all things necessary, desirable, convenient, or incidental for the accomplishment of the objectives of this chapter and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the public purposes of the authority or the Constitution and laws of this state, including:

(A) The power to retain accounting and other financial services;

(B) The power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property;

(C) The power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and

(D) The power to act as self-insurer with respect to any loss or liability and to create insurance reserves;

(25) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any of the powers of the authority and to accomplish any of the purposes of the authority. Any such subsidiary corporation shall be a nonprofit corporation, a public body, a political subdivision of the state, and an instrumentality of the state and shall exercise essential governmental functions. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. The members of the board of directors of any such corporation shall be appointed by the authority and may include persons who are members of the authority; provided, however, that a majority of the members of the board of directors of any such corporation shall be persons who are not members of the authority and who are not officials or employees of the State of Georgia. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or

bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents;

(26) To lease any authority owned facilities or property or any state owned facilities or property which the authority is managing under contract with the state; and no such lease agreement shall be deemed to be a contract subject to any law requiring that contracts shall be let only after receipt of competitive bids;

(27) To provide advisory, technical, consultative, training, management, educational, project assistance, and other services related to the purposes of the authority to the state and any institution, department, agency, or authority of the state, to any local government, or to any nonprofit or for profit business, corporation, partnership, association, sole proprietorship, or other entity or enterprise and to enter into contracts with the foregoing, including without limitation the Department of Community Affairs, to provide such services; and the state, any institution, department, agency, or authority of the state, including without limitation the Department of Community Affairs, and any local government are authorized to enter into contracts with the authority for such services, to perform all duties required by the contract, and to pay for such services as may be provided them;

(28) To impose restrictive covenants which shall be deemed to be running with the land to any person, corporation, partnership, or other form of business entity which receives financial assistance from the authority, which form of financial assistance shall include tax credits, bond financing, grants, guarantees of the authority, guarantees of the state, insurance of the authority, and all other forms of financial assistance, regardless of whether the authority enjoys privity of estate or whether the covenant touches and concerns the property burdened; and such restrictive covenants shall be valid for a period of up to the later of 40 years or the termination or satisfaction of such financial assistance, notwithstanding any other provision of law;

(29) To enter into partnership agreements, to sell and purchase partnership interests, and to serve as general or limited partner of a partnership created to further the public purposes of the authority;

(30) To allocate and issue any federal or state tax credits for which the authority is designated as the state allocating agency;

(31) To make and execute contracts and all other instruments necessary or convenient for the performance of its duties and the exercise of its powers and functions under this chapter;

(32) To cooperate with and exchange services, personnel, and information with any federal, state, or local governmental agency;

(33) To adopt regulations for its own governance regarding cost-effective distribution of authority funds and prioritization of

projects, subject to the direction of the General Assembly with regard to funds appropriated for the purposes of the authority;

(34) The authority shall have the power to contract with the Department of Community Affairs and any other department, agency, board, commission, or authority of state government for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the authority in exercising the power and management of the authority; provided, however, such contracts shall not delegate the authorization of the issuance of any bonds or other indebtedness of the authority. No part of the funds or assets of the authority shall be distributed to the Department of Community Affairs or any other department, authority, agency, board, or commission of the state unless otherwise provided by law, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred and, except as may be deemed necessary or desirable by the authority, to fulfill the purposes of the authority as set forth in this chapter. Nothing in this paragraph shall be construed as precluding the provision by any department, authority, board, commission, or agency of the state and the authority of joint or complementary services or programs within the scope of their respective powers. The Department of Community Affairs is authorized to acquire, construct, operate, maintain, expand, and improve a project for the purposes of the authority, and for the public good and general welfare, to contract with the authority for any such acquisition, construction, operation, maintenance, expansion, or improvement and to pay the cost of such project from any lawful fund source available to the department, including without limitation, where applicable, funds received by appropriation, proceeds of general obligation debt, funds of local government, grants of the United States or any agency or instrumentality thereof, gifts, and otherwise; and

(35) To establish the Georgia Value-Added Agriculture Program and to develop and encourage value-added opportunities for farmers and agricultural producers in the state through establishment of an agricultural development fund and other means deemed appropriate by the authority.

(b) The powers enumerated in each paragraph of subsection (a) of this Code section are cumulative of and in addition to those powers enumerated in the other paragraphs of subsection (a) of this Code section and elsewhere in this chapter and no such power limits or restricts any other power of the authority.

(c) This chapter, being for the welfare of this state and being for the welfare of its citizens, shall be liberally construed to effect the purposes specified in this chapter.

(d) No portion of the state ceiling, as defined in Code Section 36-82-182, shall be set aside or reserved, and no separate pool or share shall be created

within the state ceiling, for the purpose of reserving for or allocating to the authority a portion of the state ceiling for use by the authority in the financing of, or the provision of financial assistance for, any enterprise. The distribution to the authority by the Department of Community Affairs of any portion of the state ceiling for the purpose of permitting the financing of any enterprise shall be accomplished based upon the merits of each enterprise and shall be accomplished upon the same terms and conditions, without preference or priority of any kind, as shall be applicable to the distribution of any portion of the state ceiling for the benefit of any enterprise proposed to be financed by a local authority.

(e) No personal financial information submitted to the authority in connection with any of its programs shall be subject to public disclosure. (Code 1981, § 50-34-6, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2001, p. 4, § 50; Ga. L. 2002, p. 1059, § 4.)

50-34-7. Powers to issue bonds and incur indebtedness.

(a) The authority may issue bonds for the purpose of facilitating economic development; for the improvement of public health, safety, and welfare; and for other public purposes through the provision of financing and financial assistance for projects, either directly or indirectly through a financial institution; a lender; the state; any institution, department, agency, fund, or authority of the state or created under any state law; any political subdivision of the state; or any other public agency, public or private business, enterprise, agency, corporation, authority, or any other entity.

(b) The authority shall have the power to borrow money and to issue bonds, regardless of whether the interest payable by the authority incident to such loans or bonds or income derived by the holders of the evidence of such indebtedness or bonds is, for purposes of federal taxation, includable in the taxable income of the recipients of such payments or is otherwise not exempt from the imposition of such taxation on the recipient.

(c) No bonds, notes, or other obligations of, and no indebtedness incurred by, the authority shall constitute an indebtedness or obligation or a pledge of the faith and credit of the State of Georgia or its agencies; nor shall any act of the authority in any manner constitute or result in the creation of an indebtedness of the state or its agencies or a cause of action against the state or its agencies; provided, however, that the state, to the extent permitted by its Constitution, may guarantee payment of such bonds, notes, or other obligations as guaranteed revenue debt.

(d) It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and are a public purpose and the authority will be performing an essential government function in the exercise of the powers conferred upon it by this chapter. The state

covenants with the holders of the bonds that the authority shall not be required to pay any taxes or assessments upon any of the property acquired or leased by the authority or under the jurisdiction, control, possession, or supervision of the authority or upon the activities of the authority in the financing of the activities financed by the authority or upon any principal, interest, premium, fees, charges, or other income received by the authority and that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption from taxation is declared to specifically extend to any subsidiary corporation created by the board of directors of the authority but shall not extend to tenants or lessees of the authority unless otherwise exempt from taxation. The exemption from taxation shall include exemptions from sales and use taxes on property purchased by the authority or for use by the authority.

(e) The state does pledge to and agree with the holders of any bonds issued by the authority pursuant to this chapter that the state will not alter or limit the rights vested in the authority to fulfill the terms of any agreement made with or for the benefit of the holders of bonds or in any way impair the rights and remedies of bondholders until the bonds, together with the interest thereon, with interest on any unpaid installments of interest, and all costs and expenses in connection with any action or proceeding by or on behalf of such holders are fully met and discharged or funds for the payment of such are fully provided. The authority is authorized to include this pledge and agreement of the state in any agreement with bondholders. (Code 1981, § 50-34-7, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-8. Obligations not subject to the “Georgia Uniform Securities Act of 2008”; setting of rates, fees, and charges for loans; power to issue bonds.

(a) The offer, sale, or issuance of bonds, notes, or other obligations by the authority shall not be subject to regulation under Chapter 5 of Title 10, the “Georgia Uniform Securities Act of 2008.” No notice, proceeding, or publication except those required in this chapter is necessary to the performance of any act authorized in this chapter; nor is any such act subject to referendum.

(b) The authority shall fix such rates, fees, and charges for loans and for use of its services and facilities as is sufficient in the aggregate (when added to any other grants or funds available to the authority) to provide funds for the payment of the interest on and principal of all bonds payable from said revenues and to meet all other encumbrances upon such revenues as provided by any agreement executed by the authority in connection with the exercise of its powers under this chapter and for the payment of all operating costs and expenses which shall be incurred by the authority,

including provisions for appropriate reserves, except for funds appropriated to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund with respect to any bonds issued by the authority as guaranteed revenue debt; provided, however, that such costs and expenses shall include any reimbursement to the State of Georgia Guaranteed Revenue Debt Common Reserve Fund because of any payments made from such fund for any guaranteed revenue debt issued by the authority.

(c) The use and disposition of the authority's revenue is subject to the provisions of the resolutions authorizing the issuance of any bonds payable therefrom or of the trust agreement or indenture, if any, securing the same. The authority may designate any of its bonds as general obligations or may limit the source of repayment pursuant to the resolution authorizing the issuance of the bonds.

(d) The making of any loan commitment or loan, and the issuance, in anticipation of the collection of the revenues from such loan or loans, of bonds to provide funds therefor, may be authorized under this chapter by resolution of the authority. Unless otherwise provided therein, such resolution shall take effect immediately and need not be published or posted. The authority, in determining the amount of such bonds, may include all costs and estimated costs of the issuance of the bonds; all fiscal, legal, and trustee expenses; and all costs of the project. Such bonds may also be issued to pay off, refund, or refinance any outstanding bonds or other obligations of any nature, whether or not such bonds or other obligations are then subject to redemption; and the authority may provide for such arrangements as it may determine for the payment and security of the bonds being issued or for the payment and security of the bonds or other obligations to be paid off, refunded, or refinanced.

(e) Bonds may be issued under this chapter in one or more series; may bear such date or dates; may mature at such time or times, not exceeding 40 years from their respective dates; may bear interest at such rate or rates, payable at such time or times; may be payable in such medium of payment at such place or places; may be in such denomination or denominations; may be in such form, either coupon or registered or book entry; may be issued in such specific amounts; may carry such registration, conversion, and exchangeability privileges; may be declared or become due before the maturity date thereof; may provide such call or redemption privileges; may have such rank or priority; may be the subject of a put or agreement to repurchase by the authority or others; may be resold by the authority, once acquired, without the acquisition being considered the extinguishment of the bonds; may be issued for a project or for more than one project, whether or not such project is identified at the time of bond issuance; and may contain such other terms, covenants, assignments, and conditions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide. The authority may sell such

bonds in such manner, at such price or prices, and on such terms and conditions as the authority determines.

(f) The bonds must be signed by the chair or vice chair of the authority; the corporate seal of the authority must be impressed, imprinted, or otherwise reproduced on the bonds; and the bonds must be attested by the signature of the secretary or assistant secretary of the authority. The signatures of the officers of the authority and the seal of the authority on any bond issued by the authority may be facsimile if the instrument is authenticated or countersigned by a trustee other than the authority itself or an officer or employee of the authority. All bonds issued under authority of this chapter bearing signatures or facsimiles of signatures of officers of the authority in office on the date of the signing thereof are valid and binding, notwithstanding that before the delivery thereof and payment therefor such officers whose signatures appear thereon have ceased to be officers of the authority. Pending the preparation of the definitive bonds, interim certificates, in such form and with such provisions as the authority may determine, may be issued to the purchasers of bonds to be issued under this chapter.

(g) The provisions of this chapter and of any bond resolution, indenture, or trust agreement entered into pursuant to this chapter are a contract with every holder of the bonds; and the duties of the authority under this chapter and under any such bond resolution, indenture, or trust agreement are enforceable by any bondholder by mandamus or other appropriate action or proceeding at law or in equity.

(h) The authority may provide for the replacement of any bond which becomes mutilated, lost, or destroyed in the manner provided by the resolution, indenture, or trust agreement.

(i)(1) The authority shall not have outstanding at any one time bonds and notes for financing of enterprises exceeding \$1 billion; provided, however, that such limitations shall not apply with respect to bonds and notes issued to refund outstanding bonds and notes.

(2) Any limitation with respect to interest rates or any maximum interest rate or rates found in Article 3 of Chapter 82 of Title 36, the "Revenue Bond Law"; the usury laws of this state; or any other laws of this state do not apply to bonds of the authority.

(j) All bonds issued by the authority under this chapter shall be issued and shall be validated by the Superior Court of Fulton County, Georgia, under and in accordance with the procedures set forth in Code Sections 36-82-73 through 36-82-83, which comprise a portion of the "Revenue Bond Law," as now or hereafter in effect, except as provided in this chapter. Notes and other obligations of the authority may be, but are not required to be, so validated.

(k) All bonds must bear a certificate of validation signed by the clerk of the Superior Court of Fulton County, Georgia. Such signature may be made

on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry is original evidence of the fact of judgment and shall be received as original evidence in any court in this state.

(l) The authority shall reimburse the district attorney for his or her actual costs, if any, associated with the bond validation proceedings. The fees payable to the clerk of the Superior Court of Fulton County for validation and confirmation shall be as follows for each bond, regardless of the denomination of such bond: \$1.00 for each bond for the first 100 bonds; 25¢ for each of the next 400 bonds; and 10¢ for each bond over 500.

(m) In lieu of specifying the rate or rates of interest which bonds to be issued by the authority are to bear, the notice to the district attorney or the Attorney General; the notice to the public of the time, place, and date of the validation hearing; and the petition and complaint for validation may state that the bonds when issued will bear interest at a rate not exceeding a maximum per annum rate of interest (which may be fixed or may fluctuate or otherwise change from time to time) specified in such notices and the petition and complaint or may state that, if the bonds are to bear different rates of interest for different maturity dates, none of such rates will exceed the maximum rate (which may be fixed or may fluctuate or otherwise change from time to time) so specified; provided, however, that nothing in this Code section shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in doing so the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices and in the petition and complaint.

(n) Prior to issuance, all bonds shall be subject to the approval of the Georgia State Financing and Investment Commission.

(o) Any other law to the contrary notwithstanding, this chapter shall govern all civil claims, proceedings, and actions respecting debt of the authority evidenced by bonds.

(p) Notwithstanding any contrary provision in this chapter, any bonds, revenue bonds, or securities of any kind issued under this chapter may only be secured by obligation of a business, enterprise, or proceeds paid to the State of Georgia pursuant to funds received by the state pursuant to the settlement of the lawsuit filed by the state against certain tobacco companies (*State of Georgia, et al. v. Philip Morris, Inc., et al.*, Civil Action #E-61692, V19/246 (Fulton Superior Court, 19 December 9, 1998)). (Code 1981, § 50-34-8, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2008, p. 381, § 10/SB 358.)

The 2008 amendment, effective July 1, 2009, substituted “‘Georgia Uniform Securities Act of 2008.’” for “‘Georgia Securities Act of 1973.’” at the end of the first sentence in subsection (a).

50-34-9. Bonds as securities.

The bonds authorized by this chapter are securities in which:

- (1) All public officers and bodies of this state;
- (2) All local governments of this state;
- (3) All insurance companies and associations and other persons carrying on an insurance business;
- (4) All banks, bankers, trust companies, saving banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business;
- (5) All administrators, guardians, executors, trustees, and other fiduciaries; and
- (6) All other persons whomsoever who are authorized to invest in bonds or other obligations of this state

may properly and legally invest funds, including capital in their control or belonging to them. Such bonds are also securities which may be deposited with and shall be received by all public officers and bodies of this state and local governments for any purpose for which deposit of the bonds or other obligations of this state is authorized. (Code 1981, § 50-34-9, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-10. Payment of bond proceeds.

(a) All or any part of the gross or net revenues and earnings derived from any particular loan or loans and any and all revenues, earnings, and funds received by the authority, regardless of whether such revenues and earnings were produced by a particular loan or loans for which bonds have been issued, may be pledged by the authority to the payment of the principal of and interest on bonds of the authority as may be provided in any resolution authorizing the issuance of such bonds or in any indenture or trust agreement pertaining to such bonds.

(b) Such funds so pledged, from whatever source received, may include funds received from one or more of all sources and may be set aside at regular intervals into sinking funds for which provision may be made in any such resolution or indenture or trust agreement, which sinking funds may be pledged to and charged with the payment of:

- (1) The interest on such bonds as such interest becomes due;

(2) The principal of the bonds as the same mature;

(3) The necessary charges of any trustee, paying agent, or registrar for such bonds;

(4) Any premium on bonds retired on call or purchase; and

(5) Reimbursement of a credit enhancement provider who has paid principal of or premium or interest on any bond.

(c) The use and disposition of any sinking fund may be subject to regulations for which provision may be made in the resolution authorizing the issuance of the bonds or in the trust instrument or indenture securing the payment of the same. (Code 1981, § 50-34-10, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-11. Power to secure issuance of bonds by trust agreement or indenture.

(a) Any issue of bonds may be secured by a trust agreement or indenture made by the authority with a corporate trustee, which may be any trust company or bank having the power of a trust company inside or outside this state. Such trust agreement or indenture may pledge or assign all revenue, receipts, and earnings to be received by the authority from any source and any proceeds which may derive from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon.

(b) The resolution providing for the issuance of bonds and such trust agreement or indenture may contain provisions for protecting and enforcing the rights and remedies of the bondholders, including the right of appointment of a receiver on default in the payment of any principal or interest obligation and the right of any receiver or trustee to enforce collection of any rates, fees, and charges pertaining to any loan, any overdue principal and interest on any loan, any overdue principal of and interest on all bonds in the issue, all costs of collection, and all other costs reasonably necessary to accomplish the collection of such sums in the event of any default of the authority.

(c) Such resolution, trust agreement, or indenture may include covenants setting forth the duties to the authority regarding the custody, safeguarding, and application of all funds of the authority, including any proceeds derived from the disposition of any real or personal property of the authority or proceeds of insurance carried thereon. In addition, such resolution, trust agreement, or indenture may include covenants providing for the operation, maintenance, repair, and insurance of any facility or capital improvements constructed or acquired with loan proceeds.

(d) All expenses incurred in carrying out any trust agreement or indenture under this Code section may be treated as a part of the cost of

financing and administering the loans that will be funded or acquired with the proceeds of the bonds governed by such trust agreement or indenture. (Code 1981, § 50-34-11, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-12. All moneys received deemed to be trust funds; pledge of assets, funds, and properties for payment of bonds.

(a) All moneys received pursuant to the authority of this chapter, whether as proceeds from the sale of bonds or other obligations, as grants or other contributions, or as revenues and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this chapter. The authority shall, in the resolution providing for the issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds and the earnings and revenues to be received to any officer who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this chapter, subject to such regulations as this chapter and such resolution or trust indenture may provide.

(b) The authority may pledge for the payment of its bonds such assets, funds, and properties as the resolution providing for the issuance of its bonds may provide. Any such pledge made by the authority is valid and binding from the time when the pledge is made; the moneys or properties so pledged and thereafter received by the authority are immediately subject to the lien of such pledge without any physical delivery thereof or further act; and the lien of any such pledge is valid and binding as against all parties having claims of any kind against the authority, irrespective of whether such parties have notice thereof. No resolution or any other instrument by which a pledge is created need be recorded. (Code 1981, § 50-34-12, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-13. Annual and biannual audits and reports.

(a) The state auditor or an independent public accountant retained by the authority shall make an annual audit of the books, accounts, and records of the authority with respect to its receipts, disbursements, contracts, leases, assignments, loans, and all other matters relating to its financial operations. The state auditor shall place the audit report on file in his or her office, make the report available for inspection by the general public, and submit a copy of the report to the General Assembly. The state auditor shall not be required to distribute copies of the audit to the members of the General Assembly but shall notify the members of the availability of the audit in the manner which he or she deems to be most effective and efficient.

(b) In addition to the annual audit report, the authority shall render to the state auditor every six months a report setting forth in detail a complete

analysis of the activities, indebtedness, receipts, and financial affairs of the authority. (Code 1981, § 50-34-13, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2005, p. 1036, § 50/SB 49.)

50-34-14. Termination of the authority.

The authority and its corporate existence shall continue until terminated by law; provided, however, that no such law shall take effect so long as the authority shall have bonds or other obligations outstanding, unless adequate provision has been made for the payment thereof. On termination of the existence of the authority, all its rights and properties shall pass to and be vested in the State of Georgia. (Code 1981, § 50-34-14, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-15. Facilitation of economic development for enterprises throughout the state.

Without limiting the generality of the findings and intent of the General Assembly or any provision of this chapter, the authority shall facilitate economic development for enterprises throughout the state by means that shall include, without limitation, the issuance of bonds, with or without such credit enhancement as the authority may deem appropriate; the collection of and accumulation of fees and other revenues; the establishment of debt service reserves and sinking funds; and the use of the proceeds from such bonds, funds, and reserves to make loans to enterprises, either directly to such enterprises or indirectly through a financial institution, a political subdivision, or otherwise; to acquire loans made by others to such enterprises; to establish revolving or other funds from which short-term or long-term loans can be made to such businesses; to guarantee the payment of loans or other obligations of such enterprises; and to do all things deemed by the authority to be necessary, convenient, and desirable for and incident to the efficient and proper development and operation of such types of undertakings. (Code 1981, § 50-34-15, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-16. Competitive bidding not a requirement.

A project financed under this chapter is not subject to any statutory requirement of competitive bidding or other restriction imposed on the procedure for award of contracts or the lease, sale, or other disposition of property with regard to any action taken under authority of this chapter. (Code 1981, § 50-34-16, enacted by Ga. L. 2000, p. 582, § 1.)

50-34-17. OneGeorgia Authority Overview Committee established; duties.

(a) There is established the OneGeorgia Authority Overview Committee to be composed of one member of the House of Representatives to be

appointed by the Speaker of the House of Representatives, one member of the Senate to be appointed by the President of the Senate, the director of the Senate Budget Office or his or her designee, the director of the House Budget Office or his or her designee, and two members of the General Assembly to be appointed by the Governor. The legislative members shall serve for terms as members of the committee concurrent with their terms of office as members of the General Assembly. The first members of the committee shall be appointed by not later than July 1, 2000. Thereafter, their successors shall be appointed during the first 30 days of each regular legislative session which is held immediately following the election of members of the General Assembly.

(b) The Speaker of the House of Representatives shall designate one of the members appointed by the Speaker as chairperson of the committee. The President of the Senate shall designate one of the members appointed by the President of the Senate as vice chairperson of the committee. The members designated as chairperson and vice chairperson shall serve for terms as such officers concurrent with their terms as members of the committee. Other than the chairperson and vice chairperson provided for in this subsection, the committee shall provide for its own organization.

(c) The committee shall periodically inquire into and review the operations, contracts, safety, financing, organization, and structure of the OneGeorgia Authority, as well as periodically review and evaluate the success with which said authority is accomplishing its legislatively created purposes.

(d) The OneGeorgia Authority shall cooperate with the committee and its authorized personnel in order that the committee may efficiently and effectively carry out its duties. The OneGeorgia Authority shall submit to the committee such reports and data as the committee shall reasonably require of said authority in order that the committee may adequately inform itself of the activities of said authority. The committee shall, on or before the first day of January of each year and at such other times as it deems to be in the public interest, submit to the General Assembly a report of its findings and recommendations based upon the review of the operations of the OneGeorgia Authority.

(e) The members of the committee shall receive the same expenses and allowances for their services on the committee as are authorized by law for members of interim legislative study committees.

(f) Nothing in this Code section shall be construed to relieve the OneGeorgia Authority of the responsibilities imposed upon it under this chapter. (Code 1981, § 50-34-17, enacted by Ga. L. 2000, p. 582, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2008, p. VO1, § 1-22/HB 529.)

The 2008 amendment, effective January 28, 2008, in subsection (a), in the first sentence, inserted “the director of the Senate Budget Office or his or her designee, the

director of the House Budget Office or his or her designee, and” in the middle, and deleted “, and the director of the Legislative Budget Office” following “appointed by the Governor” at the end. See the Editor’s note.

Editor’s notes. — Ga. L. 2008, p. VO1, which amended this Code section, was

passed by the General Assembly as HB 529 at the 2007 regular session but vetoed by the Governor on May 30, 2007. The General Assembly overrode that veto on January 28, 2008, and the Act became effective on that date.

50-34-18. Transfer of positions authorized by authority to Department of Community Affairs.

Effective July 1, 2002, without diminishing the powers of the authority pursuant to Code Section 50-34-6, all personnel positions authorized by the authority in Fiscal Year 2002 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 2002, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service of the State Personnel Administration as defined by Code Section 45-20-6. (Code 1981, § 50-34-18, enacted by Ga. L. 2002, p. 1059, § 5; Ga. L. 2009, p. 745, § 1/SB 97.)

The 2009 amendment, effective July 1, 2009, substituted “State Personnel Adminis-

tration” for “state merit system” near the end of the last sentence of this Code section.

CHAPTER 35

**GEORGIA ENVIRONMENTAL TRAINING AND EDUCATION
AUTHORITY**

Sec.

50-35-1 through 50-35-13 [Repealed].

50-35-1 through 50-35-13.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 12, effective May 14, 2008.

Code Commission notes. — The amendment of Code Section 50-35-11 by Ga. L. 2008, p. 381, § 10, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 1015, § 12. See *County of Butts v. Strahan*, 151 Ga. 417 (1921).

Editor's notes. — This chapter was based on Code 1981, §§ 50-35-1 through 50-35-13, enacted by Ga. L. 2001, p. 1231, § 1; Ga. L. 2002, p. 415, § 50; Ga. L. 2002, p. 1049, § 1.

CHAPTER 36

VERIFICATION OF LAWFUL PRESENCE WITHIN UNITED STATES

Sec. 50-36-1.	(For effective date, see note.) Verification requirements, proce-	dures, and conditions; excep- tions; regulations; criminal and other penalties for violations.
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Effective date. — This chapter became effective July 1, 2007.

50-36-1. (For effective date, see note.) Verification requirements, procedures, and conditions; exceptions; regulations; criminal and other penalties for violations.

(a) As used in this Code section, the term:

(1) “Agency or political subdivision” means any department, agency, authority, commission, or government entity of this state or any subdivision of this state.

(2) “Applicant” means any natural person, 18 years of age or older, who has made application for access to public benefits on behalf of an individual, business, corporation, partnership, or other private entity.

(3)(A) “Public benefit” means a federal benefit as defined in 8 U.S.C. Section 1611, a state or local benefit as defined in 8 U.S.C. Section 1621, a benefit identified as a public benefit by the Attorney General of Georgia, or a public benefit which shall include the following:

(i) Adult education;

(ii) Authorization to conduct a commercial enterprise or business;

(iii) Business certificate, license, or registration;

(iv) Business loan;

(v) Cash allowance;

(vi) Disability assistance or insurance;

(vii) Down payment assistance;

(viii) Energy assistance;

(ix) Food stamps;

- (x) Gaming license;
- (xi) Health benefits;
- (xii) Housing allowance, grant, guarantee, or loan;
- (xiii) Loan guarantee;
- (xiv) Medicaid;
- (xv) Occupational license;
- (xvi) Professional license;
- (xvii) Registration of a regulated business;
- (xviii) Rent assistance or subsidy;
- (xix) State grant or loan;
- (xx) State identification card;
- (xxi) Tax certificate required to conduct a commercial business;
- (xxii) Temporary assistance for needy families (TANF);
- (xxiii) Unemployment insurance; and
- (xxiv) Welfare to work.

(B) Each year before August 1, the Attorney General shall prepare a detailed report indicating any “public benefit” that may be administered in this state as defined in 8 U.S.C. Sections 1611 and 1621 and whether such benefit is subject to SAVE verification pursuant to this Code section. Such report shall provide the description of the benefit and shall be updated annually and distributed to the members of the General Assembly and be posted to the Attorney General’s website.

(b) Except as provided in subsection (d) of this Code section or where exempted by federal law, every agency or political subdivision shall verify the lawful presence in the United States of any applicant for public benefits.

(c) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(d) Verification of lawful presence under this Code section shall not be required:

(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

(3) For short-term, noncash, in-kind emergency disaster relief;

(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General's sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient's income or resources; and

(C) Are necessary for the protection of life or safety;

(6) For prenatal care; or

(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

(e) An agency or political subdivision providing or administering a public benefit shall require every applicant for such benefit to execute a signed and sworn affidavit verifying the applicant's lawful presence in the United States, which affidavit shall state:

(1) The applicant is a United States citizen or legal permanent resident 18 years of age or older; or

(2) The applicant is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older lawfully present in the United States and provide the applicant's alien number issued by the Department of Homeland Security or other federal immigration agency.

(f) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for public benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit

may be presumed to be proof of lawful presence for the purposes of this Code section.

(g) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to this Code section shall be guilty of a violation of Code Section 16-10-20.

(h) Verification of citizenship through means required by federal law shall satisfy the requirements of this Code section.

(i) It shall be unlawful for any agency or political subdivision to provide or administer any public benefit in violation of this Code section. On or before January 1 of each year, each agency or political subdivision which administers any public benefit shall provide an annual report to the Department of Community Affairs that identifies each public benefit, as defined in subparagraph (a)(3)(A) of this Code section, administered by the agency or political subdivision and a listing of each public benefit for which SAVE authorization for verification has not been received.

(j) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Homeland Security.

(k) Notwithstanding subsection (g) of this Code section, any applicant for public benefits shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section.

(l) In the event a legal action is filed against any agency or political subdivision alleging improper denial of a public benefit arising out of an effort to comply with this Code section, the Attorney General shall be served with a copy of the proceeding and shall be entitled to be heard.

(m) Compliance with this Code section by an agency or political subdivision shall include taking all reasonable, necessary steps required by a federal agency to receive authorization to utilize the SAVE program or any successor program designated by the United States Department of Homeland Security or other federal agency, including providing copies of statutory authorization for the agency or political subdivision to provide public benefits and other affidavits, letters of memorandum of understanding, or other required documents or information needed to receive authority to utilize the SAVE program or any successor program for each public benefit provided by such agency or political subdivision. An agency or political subdivision that takes all reasonable, necessary steps and submits all requested documents and information as required in this subsection but either has not been given access to use such programs by such federal agencies or has not completed the process of obtaining access to use such programs shall not be liable for failing to use the SAVE program or any such successor program to verify eligibility for public benefits.

(n) In the case of noncompliance with the provisions of this Code section by an agency or political subdivision, the appropriations committee

of each house of the General Assembly may consider such noncompliance in setting the budget and appropriations.

(o) No employer, agency, or political subdivision shall be subject to lawsuit or liability arising from any act to comply with the requirements of this chapter. (Code 1981, § 50-36-1, enacted by Ga. L. 2006, p. 105, § 9/SB 529; Ga. L. 2009, p. 8, § 50/SB 46; Ga. L. 2009, p. 970, § 3/HB 2.)

Delayed effective date. — This Code section, as set out above, becomes effective January 1, 2010. Until January 1, 2010, this Code section reads as follows: “(a) Except as provided in subsection (c) of this Code section or where exempted by federal law, on or after July 1, 2007, every agency or political subdivision of this state shall verify the lawful presence in the United States of any natural person 18 years of age or older who has applied for state or local public benefits, as defined in 8 U.S.C. Section 1621, or for federal public benefits, as defined in 8 U.S.C. Section 1611, that is administered by an agency or a political subdivision of this state.

“(b) This Code section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

“(c) Verification of lawful presence under this Code section shall not be required:

“(1) For any purpose for which lawful presence in the United States is not required by law, ordinance, or regulation;

“(2) For assistance for health care items and services that are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Section 1396b(v)(3), of the alien involved and are not related to an organ transplant procedure;

“(3) For short-term, noncash, in-kind emergency disaster relief;

“(4) For public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not such symptoms are caused by a communicable disease;

“(5) For programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter specified by the United States Attorney General, in the United States Attorney General’s sole and unreviewable discretion after consultation with appropriate federal agencies and departments, which:

“(A) Deliver in-kind services at the community level, including through public or private nonprofit agencies;

“(B) Do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the individual recipient’s income or resources; and

“(C) Are necessary for the protection of life or safety;

“(6) For prenatal care; or

“(7) For postsecondary education, whereby the Board of Regents of the University System of Georgia or the State Board of Technical and Adult Education shall set forth, or cause to be set forth, policies regarding postsecondary benefits that comply with all federal law including but not limited to public benefits as described in 8 U.S.C. Section 1611, 1621, or 1623.

“(d) Verification of lawful presence in the United States by the agency or political subdivision required to make such verification shall occur as follows:

“(1) The applicant must execute an affidavit that he or she is a United States citizen or legal permanent resident 18 years of age or older; or

“(2) The applicant must execute an affidavit that he or she is a qualified alien or nonimmigrant under the federal Immigration and Nationality Act, Title 8 U.S.C., as amended, 18 years of age or older lawfully present in the United States.

“(e) For any applicant who has executed an affidavit that he or she is an alien lawfully present in the United States, eligibility for benefits shall be made through the Systematic Alien Verification of Entitlement (SAVE) program operated by the United States Department of Homeland Security or a successor program designated by the United States Department of Homeland Security. Until such eligibility verification is made, the affidavit may be presumed to be proof of lawful presence for the purposes of this Code section.

“(f) Any person who knowingly and willfully makes a false, fictitious, or fraudulent statement of representation in an affidavit executed pursuant to subsection (d) of this Code section shall be guilty of a violation of Code Section 16-10-20.

“(g) Agencies or political subdivisions of this state may adopt variations to the requirements of this Code section to improve efficiency or reduce delay in the verification process or to provide for adjudication of unique individual circumstances where the verification procedures in this Code section would impose unusual hardship on a legal resident of Georgia.

“(h) It shall be unlawful for any agency or a political subdivision of this state to provide any state, local, or federal benefit, as defined in 8 U.S.C. Section 1621 or 8 U.S.C. Section 1611, in violation of this Code section. Each state agency or department which administers any program of state or local public benefits shall provide an annual report with respect to its compliance with this Code section.

“(i) Any and all errors and significant delays by SAVE shall be reported to the United States Department of Homeland Security and to the Secretary of State which will monitor SAVE and its verification application errors and significant delays and report yearly on such errors and significant delays to ensure that the application of SAVE is not wrongfully denying benefits to legal residents of Georgia.

“(j) Notwithstanding subsection (f) of this Code section any applicant for federal benefits as defined in 8 U.S.C. Section 1611

or state or local benefits as defined in 8 U.S.C. Section 1621 shall not be guilty of any crime for executing an affidavit attesting to lawful presence in the United States that contains a false statement if said affidavit is not required by this Code section.”

The 2009 amendments. — The first 2009 amendment, effective July 1, 2009, part of an Act to revise, modernize, and correct the Code, revised language in subsection (a); and, in paragraph (d)(2), inserted “, Title 8 U.S.C., as amended,”. The second 2009 amendment, effective January 1, 2010, rewrote this Code section.

Cross references. — Registration of Immigration Assistance Act, § 43-20A-1 et seq.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, “or” was deleted at the end of paragraph (c)(4), a semicolon was substituted for a period at the end of subparagraph (c)(5)(C) and “Homeland” was inserted following “United States Department of” in subsection (i).

Editor’s notes. — Ga. L. 2006, p. 105, § 1, not codified by the General Assembly, provides that: “This Act shall be known and may be cited as the ‘Georgia Security and Immigration Compliance Act.’ All requirements of this Act concerning immigration or the classification of immigration status shall be construed in conformity with federal immigration law.”

Law reviews. — For article on 2006 enactment of this Code section, see 23 Ga. St. U.L. Rev. 247 (2006). For article, “The Georgia Security and Immigration Compliance Act: Comprehensive Immigration Reform in Georgia — ‘Think Globally ... Act Locally,’” see 13 Ga. St. B.J. 14 (2007).

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Voluntary termination of provider agreements, §49-4-146.2.

Assistance.

Aid to the blind, §49-4-51.

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Benefits based funding project.

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Bonds.

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Business.

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Business operations.

Contracting with companies having business operations in Sudan, §50-5-84.

Capital outlay projects.

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Case management.

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Case manager.

Children and adolescents with severe emotional problems, §49-5-221.

Cash assistance.

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Casino gambling.

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Center.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Certification of compliance.

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Charitable institution.

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Chief executive officer.

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Child.

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Child abuse, §49-5-40.

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Child in care.

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Claimant agency.

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False Medicaid claims, §49-4-168.

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Clean Air Act.

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Commemoration.

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Confirmed.

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commission, §50-17-21.

Contested case.

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Contract.

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Contractor.

Drug-free workplace, §50-24-2.

Controlled substance.

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Conviction.

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institutions, §49-5-60.
Health care facility owner operating with
criminal record.
Prohibition, §49-2-14.1.
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children, §49-5-110.

Conviction data.

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Coordinated and comprehensive planning.

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Coordinated system of care.

Children and adolescents with severe
emotional problems, §49-5-221.

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§50-7-17.

Corporation.

Lotteries, §50-27-3.

Corrective action plan.

Nonprofit contractors, §50-20-2.

Corrective order.

Emergency protection of children in
certain institutions, §49-5-90.

Correct or ameliorate.

Therapy services for children with
disabilities, §49-4-169.1.

Cost of an enterprise.

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OneGeorgia authority, §50-34-2.

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Costs.

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obtained through medicaid fraud,
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State financing and investment
commission.
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County board.

County or district board of family and children services, §49-1-1.

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County or district department of family and children services, §49-1-1.

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County or district department of family and children services, §49-1-1.

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Court record.

State records management, §50-18-91.

Crime.

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Health care facility owner operating with criminal record.

Prohibition, §49-2-14.1.

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Criminal drug statute.

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Criminal record.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Health care facility owner operating with criminal record, §49-2-14.1.

Record checks for persons supervising children, §49-5-110.

Debt.

Setoff of debt collection against lottery prizes, §50-27-51.

State financing and investment commission.

Interest rate management, §50-17-100.

Debtor.

Setoff of debt collection against lottery prizes, §50-27-51.

Decertification.

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Deed.

State properties code, §50-16-31.

Delinquent or unruly child or youth.

Juvenile justice, §49-4A-1.

Dementia.

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Department head.

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Deprived child or youth.

Youth services, §49-5-3.

Development activity.

State of Georgia, §50-16-19.

Development guides.

Metropolitan area planning and development commissions, §50-8-80.

DFACS office.

Central child abuse registry, §49-5-180.

Directional signs.

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Director.

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Direct-support organization.

Georgia state games commission, §50-12-40.

Discretionary function or duty.

Tort claims act, §50-21-22.

District.

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Division.

Energy resources division, §50-23-30.

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Educational facilities.

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Educational purposes and programs.

Lotteries, §50-27-3.

E-85 gasoline.

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E-85 project.

§50-8-170.

Electronic.

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Eligible recipient.

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Emergency order.

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Emergency temporary employee.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

Employees.

Drug-free workplace, §50-24-2.

Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.

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Employer.

Record checks for persons supervising children, §49-5-110.

Employment history.

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Energy efficient buildings.

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Environmental services.

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EPSDT program.

Therapy services for children with
disabilities, §49-4-169.1.

External oversight committee.

Purchasing, multiyear lease-purchase
agreements, §50-5-77.

Facility.

Emergency protection of children in
certain institutions, §49-5-90.
Employee records checks for child-caring
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institutions, §49-5-60.
Health care facility owner operating with
criminal record.
Prohibition, §49-2-14.1.
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Family.

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Temporary assistance for needy families,
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Family attention home.

Juvenile justice, §49-4A-13.

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Federal law.

PeachCare for Kids act, §49-5-272.

File.

GeorgiaNet authority, §50-25-1.

Financial advisory matters.

State financing and investment
commission, §50-17-21.

Fingerprint records check determination.

Employee records checks for child-caring
institutions and child-placing
institutions, §49-5-60.

Fiscal officer of the state.

State financing and investment
commission, §50-17-21.

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Five-year plan.

Children and adolescents with severe
emotional problems, §49-5-221.

Foster care home.

Employee records checks for child-caring
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institutions, §49-5-60.

Foster parent or parents.

Employee records checks for child-caring
institutions and child-placing
institutions, §49-5-60.

Full-service restaurant.

REAP, §50-8-190.

Function.

Executive branch organization, §50-4-1.

Functionally dependent older adult.

Family caregiver support, §49-6-72.

Functionally impaired elderly person.

Community care and services for the
elderly, §49-6-61.

Funds.

Governor's office of children and
families, §49-5-131.

Gasoline.

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GCIC.

Employee records checks for child-caring
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GCIC information.

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Generally accepted accounting principles.

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Nonprofit contractors, §50-20-2.

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standards.**

Nonprofit contractors, §50-20-2.

General obligation debt.

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partnership program approved policy.**

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governments, §50-18-99.

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Governmental services.

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Government of Sudan.

Contracting with companies having
business operations in Sudan,
§50-5-84.

Group-care facility.

Youth services, §49-5-3.

Guaranteed revenue debt.

State financing and investment
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Guardian.

Emergency protection of children in
certain institutions, §49-5-90.

Health care services.

Housing and finance authority, §50-26-4.

Health facility.

Housing and finance authority, §50-26-4.

Highest year-end balance.

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Homemaker service.

Youth services, §49-5-3.

Home modification.

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Household income.

Family caregiver support, §49-6-72.

Housing.

Housing and finance authority, §50-26-4.

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Human service programs.

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Implement.

New Georgia foundation for tourism,
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Implementation.

New Georgia foundation for tourism,
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Income.

Family caregiver support, §49-6-72.

Independent financial adviser.

State financing and investment
commission.

Interest rate management, §50-17-100.

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Indirect ownership interest.

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Individual.

Drug-free workplace, §50-24-2.

Individualized plan.

Children and adolescents with severe
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In loco parentis.

Youth services, §49-5-3.

Inspection warrant.

Residential child care licensing, §49-2-20.

Installation.

Grants for clean energy property,
§50-23-21.

Institution.

Private provider operation of institution
under control of agency.

Contract between state agency and
private provider, §50-4-6.

Privatization.

Contract by executive branch unit for,
§50-4-5.

Interested party.

Lotteries, §50-27-3.

Interest holder.

Medicaid.

Forfeiture of property and proceeds
obtained through medicaid fraud,
§49-4-146.3.

Interest rate management plan.

State financing and investment
commission, §50-17-100.

Knowing.

False Medicaid claims, §49-4-168.

Knowingly.

False Medicaid claims, §49-4-168.

Lead agency.

Community care and services for the
elderly, §49-6-61.

Lease.

State properties code, §50-16-31.

Lease agreement.

Environmental facilities authority,
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Regional transportation authority,
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Lease or installment purchase contract.

State financing and investment
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Legal custody.

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Less developed county.

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License.

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- Employee records checks for child-caring institutions and child-placing institutions, §49-5-60.
- Health care facility owner operating with criminal record, §49-2-14.1.

Life cycle costs.

- Purchasing, §50-9-100.

Lighting retrofit project.

- Grants for clean energy property, §50-23-21.

Limited provider agreement.

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Local government.

- Community affairs, §50-8-2.
- Environmental facilities authority, §50-23-4.
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Local interagency children's committees.

- Children and adolescents with severe emotional problems, §49-5-221.

Local plan.

- Regional commissions, §50-8-31.
- Rural facilities economic development, §50-8-212.

Long-term care facility.

- Medicaid.
 - Reuse of unit dosage drugs, §49-4-152.3.

Loss.

- Tort claims act, §50-21-22.

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Mailed.

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- Youth services, §49-5-3.

Major facility project.

- Energy efficiency and sustainable construction act of 2008, §50-8-18.

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Major procurement contract.

- Lotteries, §50-27-3.

Management services.

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Managing employee.

- Medicaid, §49-4-146.1.

Marginalized populations of Sudan.

- Contracting with companies having business operations in Sudan, §50-5-84.

Marijuana.

- Drug-free workplace, §50-24-2.

Market.

- New Georgia foundation for tourism, §50-7-17.

Marketing.

- New Georgia foundation for tourism, §50-7-17.

Maternity home.

- Youth services, §49-5-3.

May.

- Environmental facilities authority, §50-23-4.
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Measurement tool.

- Purchasing, multiyear lease-purchase agreements, §50-5-77.

Medicaid.

- PeachCare for Kids act, §49-5-272.

Medicaid eligible residents.

- Voluntary termination of provider agreements, §49-4-146.2.

Medicaid fraud.

- Forfeiture of property and proceeds, §49-4-146.3.

Medical assistance, §49-4-141.

Medically necessary services.

- Therapy services for children with disabilities, §49-4-169.1.

Medical model.

- Licenses for adult day care centers, §49-6-82.

Meetings.

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- Lotteries, §50-27-3.

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Metropolitan planning organization.

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Military equipment.

Contracting with companies having
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§50-5-84.

Mill broke.

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Mineral-extraction activities.

Contracting with companies having
business operations in Sudan,
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Minimum standards and procedures.

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Minority.

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Minority business.

Lotteries, §50-27-3.

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Monitor.

Emergency protection of children in
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Motor fuel.

Grants promoting E-85 gasoline,
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equipment.**

Grants promoting E-85 gasoline,
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Neglect.

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Net proceeds.

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Nongovernmental entity.

Environmental facilities authority,
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Nonprofit corporations.

Environmental facilities authority,
§50-23-4.
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Nonprofit organization.

Nonprofit contractors, §50-20-2.

Nonpublic council member.

Regional commissions, §50-8-31.

Nonpublic funds.

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Notice of noncompliance.

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Obligation.

Environmental facilities authority,
§50-23-4.
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Occurrence.

Tort claims act, §50-21-22.

Office.

Records management programs for local
government, §50-18-99.

Office of profit or trust under the state.

Regional transportation authority,
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Officer or employee.

Records management programs for local
governments, §50-18-99.

Oil related activities.

Contracting with companies having
business operations in Sudan,
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Operating capital.

Housing and finance authority, §50-26-4.
OneGeorgia authority, §50-34-2.

Operating expenses.

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Ophthalmologist.

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Aid to the blind, §49-4-51.

Original source.

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Out-of-state abuse investigator.

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Outreach.

Economic rehabilitation services, §49-8-3.

Owned and controlled.

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Owners.

Health care facility owner operating with criminal record, §49-2-14.1.

Medicaid.

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Pari-mutuel betting.

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Participating provider.

Housing and finance authority, §50-26-4.

Parties.

Administrative procedure, §50-13-2.

Payment.

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PeachCare, §49-5-272.

Periods.

GeorgiaNet authority, §50-25-6.

Person.

Administrative procedure, §50-13-2.

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Public property, §50-16-82.

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State managerial control over professional services, §50-22-2.

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Person with an ownership or control interest.

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Policy.

Executive branch organization, §50-4-1.

Political subdivision.

Metropolitan area planning and development commissions, §50-8-80.

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Poverty guideline.

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Power-production activities.

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State managerial control over professional services, §50-22-2.

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Prevention program.

Governor's office of children and families, §49-5-131.

Primary caregiver.

Family caregiver support, §49-6-72.

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Principal representative.

Drug-free workplace, §50-24-2.

State managerial control over professional services, §50-22-2.

Printing and writing paper.

Recycled paper products, §50-5-60.2.

Prize.

Setoff of debt collection against lottery prizes, §50-27-51.

Probation.

Youth services, §49-5-3.

Proceeds.

Medicaid.
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Professional service.

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Program.

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Privatization.

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- State managerial control, §50-22-2.

Proper authority.

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- Medicaid.

- Forfeiture of property and proceeds obtained through medicaid fraud, §49-4-146.3.

- State properties code, §50-16-31.

Prosecutor.

- Medicaid.

- Forfeiture of property and proceeds obtained through medicaid fraud, §49-4-146.3.

Protective supervision.

- Youth services, §49-5-3.

Provider.

- Medicaid, §49-4-146.1.

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